

**Questions for the Record of Senator Patrick Leahy
Senate Judiciary Committee,
Hearing on the Nomination of Senator Jeff Sessions to Serve
as Attorney General of the United States
January 17, 2017**

1. At your hearing, I asked you several questions about your opposition to these two bills. With respect to VAWA, you stated “a number of people opposed some of the provisions in that bill.” You mentioned specifically the tribal victims provision.

a. **Did you also oppose the new protections for LGBT Americans?**

I asked if you would defend the law’s constitutionality, and you did not provide a full answer. You said only that you would “if it is reasonably defensible.”

b. **Do you believe the 2013 Leahy-Crapo VAWA Reauthorization, including its LGBT and tribal victims provisions, is “reasonably defensible”?**

At your hearing, I asked about your statement that my hate crimes amendment “has been said to cheapen the civil rights movement.”

c. **What did you mean by that? Do you believe that the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act “cheapen[ed] the civil rights movement”?**

2. As Attorney General you would be charged with overseeing the Office of Violence Against Women. This Office is a component of the Justice Department, and was developed to reduce violence against women by prosecuting acts of domestic violence, dating violence, sexual assault, and stalking. This office provides 24 separate grant programs that support law enforcement, state and tribal coalitions, non-profit organizations, and institutions of higher education to serve survivors and hold offenders accountable.

Will you commit to preserving these critical grant programs and to ensure they receive the funding they need so that the Office can effectively carry out its mission?

3. The Attorney General has delegated authority to the Executive Office for Immigration Review, which oversees our country’s immigration courts and the Board of Immigration Appeals. In recent years, developments in immigration law have led to a recognition that domestic violence can serve as the basis for an asylum claim. These cases often involve immigrant women who have endured severe abuse at the hands of their partner and would be placed in danger if returned to their home country. But asylum continues to be denied to many of them.

If confirmed as Attorney General, will you commit to protecting victims of domestic violence who fear being returned to their home countries?

4. We have heard a lot in the last two months about the President-elect's business and financial holdings, and how he and his family might personally benefit from his decisions as President. This raises extremely troubling issues with respect to conflicts of interest, the STOCK Act, and the Emoluments Clause of the Constitution.

I understand that you plan to divest some of your holdings if you are confirmed to be Attorney General. You also stated in your questionnaire that you have consulted with the Office of Government Ethics and "will follow their guidance" on conflicts of interest.

- a. **Should the President-elect follow your example and heed the Office of Government Ethics' guidance and divest from assets that might create a conflict of interest?**
- b. **If President-elect Trump does not follow the guidance of the Office of Government Ethics, what steps will you take to ensure that the new administration eliminates its conflicts of interest? Will you recuse yourself from conflicts of interest charges against the President-elect or members of his family?**

In a hearing early last year, Senator Tillis raised a question about the Emoluments Clause, which states that "no person holding any office of profit or trust under [the United States] shall, without the consent of the Congress, accept of any present, emolument, office, or title ... from any king, prince, or foreign state." He and Chairman Grassley both followed up with Attorney General Lynch on the issue. The question was whether the receipt of any payment "from a foreign government or an instrumentality of a foreign government" by a spouse of an executive branch officer violated the Constitution. Such questions are even more pressing when it is the constitutional officer himself who is receiving such payments.

- c. **If the President-elect does not fully divest, does the rent paid by the Industrial and Commercial Bank of China to the President-elect for space at Trump Tower in New York raise concerns vis a vis the Emoluments Clause? The Bank, which is owned by the Chinese government, is according to news reports the largest tenant in Trump Tower.**
- d. **If the President-elect does not fully divest, does money paid by the embassies of various foreign governments for the use of event space or lodging at the President-elect's hotel here in Washington raise concerns vis a vis the Emoluments Clause?**

A 2009 Office of Legal Counsel opinion found that the Emoluments Clause "surely" applies to the president. As Justice Alito explained when he served in that office in 1986, the Clause is intended to minimize "the potential for 'corruption and foreign influence.'" It was good to hear you state at your hearing, in response to Senator Blumenthal, that the Clause does apply to the President.¹

- e. **What is the Justice Department's role in enforcing the Emoluments Clause?**

¹ Transcript 179.

- f. Who would have standing to bring a case regarding the Emoluments Clause? Do states have standing to enforce it?**

The President-elect has tried to minimize the potential conflicts of interest presented by his business interests by stating that his children will run the Trump Organization. Yet he has refused to give up his stake in the company, which does business with countless organizations and individuals tied to foreign governments. Ethics experts have declared that these conflicts of interest will not be resolved as long as the President-elect maintains a financial stake in his companies.

- g. When the President has a personal financial stake in the policies and trade deals his administration pursues, doesn't that pose a conflict of interest?**
- h. If President-elect Trump fails to fully divest, how will the American public know if the President is making a decision to benefit America, or to make himself or his family more money?**
- i. Doesn't the public interest demand full financial disclosure and divestment?**

Even if Mr. Trump fully divests himself from the Trump Organization and his children take full control of it, the problems do not go away. His children have taken an active role in the transition, and anything that benefits them will of course benefit their father.

- k. Should President-elect Trump's children participate in government policy discussions or meetings with foreign governments while they are also running or maintaining a stake in the Trump Organization? Does participation by President-elect Trump's children or other family members in his administration raise concerns about possible violations of anti-nepotism laws?**

Last month former House Speaker Newt Gingrich argued that "traditional rules don't work" and that Congress should change existing ethics laws in order to accommodate the incoming President. These laws exist to ensure that public officials are focused on serving the public, and not on enriching themselves.

- l. Do you agree with Speaker Gingrich that we should weaken our ethics laws to accommodate the President-elect?**

5. While serving as Attorney General of Alabama, you attempted to vacate a consent decree that successfully reformed Alabama's child welfare system, turning it from "dysfunctional" to a national model, according to the New York Times. When you filed your motion to vacate the decree, you alleged that your predecessor and the client agency had colluded and engaged in "fraud upon the court." I am troubled that you made this allegation when the court "found no evidence" that "any party actively misled or deceived the Court." If confirmed as Attorney General, you will be tasked with representing the Federal government in court, and you will have to defend not only laws you voted against, but administrative actions taken by prior administrations that you disagree with.

- a. **Is it common for an attorney to accuse their client of collusion and fraud? Do you believe that such accusations are consistent with an attorney's obligation to provide zealous advocacy on behalf of his or her client?**
- b. **Is it appropriate for an attorney, let alone an Attorney General, to make accusations of fraud in court without evidence to support the claim?**

Even the judge in this case said, "If the Court were to speculate, it would guess that political gamesmanship played perhaps the biggest role in determining the timing of this challenge. What was convenient and beneficial for one administration has saddled its successor with serious obligations with which it would rather not comply."

- c. **Given this criticism, what steps will you take, if confirmed, to ensure that you make decisions as Attorney General only on the basis of law rather than your own ideology?**

6. In the past year, four people, including a newborn baby, have died in the jail run by Milwaukee Sheriff David Clarke, and according to news reports the Department of Justice is considering opening an investigation into that jail.² The Sheriff's office issued a statement that essentially says he is counting on you as Attorney General to quash any investigation into the conditions at the jail.

Did you campaign for Mr. Trump with Sheriff Clarke, or have any other interaction with him in the last year? If so, please describe them. If so, will you recuse yourself from any Justice Department investigation of that jail or of Sheriff Clarke?

7. Traditionally, the Attorney General and the Department's Office of Legal Policy have had a significant role in the selection of judicial nominees. Unprecedented obstruction in the Senate has resulted in 108 current vacancies, including the vacancy on the Supreme Court to which Merrick Garland was nominated and should have been confirmed last year.

- a. **What will be your role in the Trump administration with respect to judicial nominations?**

I am concerned that your record on nominations does not indicate any efforts at diversity. You failed to return the blue slip for Kenneth Simon, and failed to return the blue slip for Judge Kallon, who would have been the first African American judge to fill an Alabama seat on the Eleventh Circuit. Moreover, each of the ten Bush-nominated judges confirmed to seats in Alabama was white. Just three African Americans have ever served on the Federal bench in Alabama. Over the past eight years, President Obama has made judicial diversity a priority, and has made significant progress in ensuring the Federal bench reflects the Nation it serves.

² <http://www.jsonline.com/story/news/local/milwaukee/2016/11/16/inmate-baby-died-after-staff-ignored-her-labor/93988574>.

- b. If confirmed, will you and the incoming administration commit to continuing this work, and putting forward nominees who represent a breadth of racial, religious, and professional backgrounds?**

As a Senator and a member of this Committee for 20 years, you are very familiar with the blue slip and the role that home state Senators play in judicial selection. You used the blue slip to block the nominations of Kenneth Simon and Abdul Kallon. But the blue slip also guarantees the constitutional role of advise and consent as a check against presidential power, and ensure that the Senate is not a mere rubber stamp. Chairman Grassley recently reiterated his support for the blue slip and his intent to keep the current policy – that nominees will not move forward without two positive blue slips – in place.

- c. If confirmed, will you continue to support this policy, even if it means nominations made by the President-elect do not receive a hearing?**

During the previous Republican administration, many Senators were concerned that the administration circumvented their traditional role of making recommendations for judgeships and instead effectively outsourced the process to right-wing legal groups.

- d. Will you and the incoming administration commit to preserving the rights of home state Senators, and work with all 100 of us to find consensus nominees to serve on our independent judiciary?**

8. When evaluating President Clinton and President Obama’s judicial and executive branch nominees, you often asked questions based on nominees’ associations with particular groups and organizations, particularly if nominees had been members of organizations such as the ACLU. For example, when opposing Judge Susan Mollway, you said:

“I know all of us are active in various activities. And I think it is appropriate that we be asked about those activities when we are nominated for a position like this... I am certain that as a board member she did not sign those pleadings, and maybe did not personally conduct in-depth research. In fact, I think she suggested she has not researched each one of these issues. But I think it is appropriate for us to ask about those positions”

You concluded that this organization held views that were “outside the mainstream.” You noted that “when asked at our confirmation hearing if there were any policy positions of the Hawaii ACLU that she disagreed with” this nominee did not name any, and you argued this was “a sufficient basis...to have a serious concern” about the nomination.

I have grave concerns regarding organizations with which you have been involved.

In 2014, you accepted the “Daring the Odds” award from the David Horowitz Freedom Center. The Southern Poverty Law Center has repeatedly called David Horowitz an “anti-Muslim extremist” and has an extensive and detailed profile of Mr. Horowitz’s racist and repugnant remarks against Muslims, Arabs, and African-Americans.

In your hearing, you stated to Senator Blumenthal with regard to Mr. Horowitz that “I am not aware of everything he has ever said or not.” You also defended your association with him by saying “I am not aware of those comments, and I do not believe David Horowitz is a racist or a person that would treat anyone improperly, at least to my knowledge.” Now you have had the opportunity to learn more about the extremist remarks Mr. Horowitz has made.

For example, Mr. Horowitz has repeatedly claimed that the United States government has been infiltrated by Muslims. He has referred to Muslims as “Islamic Nazis” who “want to kill Jews, that’s their agenda.”³

a. Do you disavow and condemn that remark?

Mr. Horowitz has said “Obama is an anti-American radical and I’m actually sure he’s a Muslim, he certainly isn’t a Christian. . . . He’s a pretend Christian in the same way he’s a pretend American.”⁴

b. Do you disavow and condemn that remark?

Mr. Horowitz has even claimed that Muslims have “infiltrated” the Republican Party, and that “Grover Norquist is a Muslim, he is a practicing Muslim.”⁵

c. Do you disavow and condemn that remark?

Given statements like those, it’s not shocking that Mr. Horowitz was cited in the manifesto written by Norway terrorist Andres Breivik. Mr. Breivik killed 77 people in a 2011 attack that was inspired by his belief that Muslims were taking over Europe.

d. Other than that award, have you had any involvement with that organization? Has all such involvement been disclosed in your Questionnaire?

In 2015, you received the “Keeper of the Flame” award from the Center for Security Policy. The Center for Security Policy has been strongly criticized by the Anti-Defamation League, and is considered a hate group by the Southern Poverty Law Center.

In 2011, its founder, Frank Gaffney, was banned from the Conservative Political Action Conference (CPAC) because, in the words of one board member, “they didn’t want to be associated with a crazy bigot.” Among his disgraceful statements, Mr. Gaffney has said that the two Muslims in Congress, Representative Keith Ellison and Andre Carson, have “longstanding Muslim Brotherhood ties.”⁶

e. CPAC did not want to be associated with a “crazy bigot,” but you accepted an award from him in 2015. Do you condemn Mr. Gaffney’s remarks and his

³ <http://mondoweiss.net/2011/03/peter-king-hearings-come-to-flatbush-david-horowitz-stokes-anti-muslim-sentiment-at-brooklyn-college>.

⁴ <http://www.rightwingwatch.org/post/david-horowitz-knows-obama-is-a-muslim-because-he-hates-america-so-much>.

⁵ <http://www.rightwingwatch.org/post/david-horowitz-says-huma-abedin-is-worse-than-alger-hiss-and-grover-norquist-is-a-practicing-muslim-subverting-the-gop>.

⁶ <http://thehill.com/blogs/pundits-blog/homeland-security/276636-muslim-brotherhood-day-on-capitol-hill>.

insinuation that the two Muslim Congressmen are affiliated with the Muslim Brotherhood?

- f. Do you believe it is acceptable for the Attorney General to associate with Mr. Gaffney and his extremist organization?**
- g. Mr. Gaffney has complained about Somali refugees holding jobs in the meat processing industry, saying “it kind of creeps me out that they are getting jobs in the food supply of the United States.”⁷ Do you condemn that statement?**
- h. Mr. Gaffney argued that a Muslim member of Congress should not be allowed to serve on the House Intelligence Committee because of his “extensive personal and political associations with...jihadist infrastructure in America.”⁸ Do you condemn that remark?**
- i. Mr. Gaffney has said of President Obama that it is an “increasingly indisputable fact that this president is providing aid and comfort to enemies of the United States. And that is the definition, as you know, of treason.”⁹ Do you condemn the offensive allegation that President Obama is a traitor?**
- j. Other than that award, have you had any involvement with that organization or with Mr. Gaffney? Has all such involvement been disclosed in your Questionnaire?**

President-elect Trump has appointed Michael Flynn to be his National Security Advisor. The National Security Advisor has typically been the President’s principal advisor on national security matters, a position that does not require Senate confirmation.

Mr. Flynn serves on the board of advisors for an organization called ACT for America. The Southern Poverty Law Center has called this organization “far and away the largest grassroots anti-Muslim group in America.” In August 2016 – less than six months ago – Mr. Flynn spoke at an event for this group. He is on video saying that Islam “is a political ideology. It definitely hides behind this notion of it being a religion.” He also added that Islam is “like a malignant cancer.”¹⁰

- k. Do you disavow and condemn Mr. Flynn’s remarks?**
- l. Do you believe that the President’s national security advisor should refer to Islam as a “malignant cancer”?**
- m. Do you believe the National Security Advisor should be associated with organizations that promote anti-Islamic bigotry and conspiracy theories?**

In the unclassified Intelligence Community Assessment on “Assessing Russian Activities and Intentions in Recent US Elections” released on January 6, 2017, there are seven pages describing

⁷ <http://thehill.com/blogs/congress-blog/civil-rights/271366-freedom-and-hate>.

⁸ <http://www.rightwingwatch.org/post/frank-gaffney-muslim-congressman-part-of-islamic-fifth-column>.

⁹ <http://www.rightwingwatch.org/post/frank-gaffney-obama-playing-for-the-other-team-committing-treason>.

¹⁰ <https://qz.com/841197/islam-is-a-malignant-cancer-the-hateful-rhetoric-of-michael-flynn-trumps-new-national-security-adviser>.

the activities of RT America TV. The report notes that the network’s “Leadership [is] closely tied to, controlled by Kremlin.” Mr. Flynn has given a paid speech to RT, and attended a dinner celebrating the network’s anniversary, where he sat at the same table as Vladimir Putin.¹¹

n. What legal issues does the relationship between the incoming National Security Advisor and the Russian government raise?

In 2015, you received an award from the Eagle Forum for “Excellence in Leadership.” The late founder of that organization has a long history of controversial remarks. That includes advocating for “railroad cars full of illegals going south”¹² and increasing the pay gap between men and women,¹³ and arguing that married women by definition cannot be raped by their husbands.¹⁴

- o. Do you agree that there should be “railroad cars full of illegals going south”? Do you condemn that remark?**
- p. Do you agree that married women by definition cannot be raped by their husbands? Do you condemn that remark?**
- q. Do you agree that the pay gap between men and women should be increased, rather than diminished?**
- r. Ms. Schlafly also claimed “it would be useful to reinstate the House Committee on Un-American Activities” to target Muslims.¹⁵ Do you agree with that statement?**
- s. Other than that award, have you had any involvement with that organization? Has all such involvement been disclosed in your Questionnaire?**

9. Over the course of the 2016 campaign, you offered extensive criticisms of the power that elites and special interests have in our politics. Even after *Citizens United* unleashed a massive flow of money into our elections, there are still laws that regulate political spending and coordination between campaigns and PACs. Under the leadership of Eric Holder, the Department of Justice in 2015 successfully prosecuted illegal coordination between a campaign and a PAC. This was the first prosecution of its kind. The lead prosecutor on the case stated: “The Department of Justice is fully committed to addressing the threat posed to the integrity of federal primary and general elections by coordinated campaign contributions, and will aggressively pursue coordination offenses at every appropriate opportunity.”

If confirmed, you will be joining an administration that has pledged to “drain the swamp” in Washington. In order to ensure that our government is open responsive to its citizens, it is critical that Americans know who is lobbying their representatives. The Lobbying Disclosure Act created a registration requirement for lobbyists which is enforced by the Department of Justice through the U.S. Attorney’s Office in Washington, DC.

¹¹ <http://www.cnn.com/2016/11/20/politics/kfile-michael-flynn-rt-syria>.

¹² <http://www.rightwingwatch.org/post/phyllis-schlafly-wants-railroad-cars-full-of-illegals-going-south>.

¹³ <http://www.rightwingwatch.org/post/schlafly-increase-the-pay-gap-so-women-will-have-better-opportunities-to-find-a-husband>.

¹⁴ <http://www.rightwingwatch.org/post/schlafly-reiterates-view-that-married-women-cannot-be-raped-by-husbands>.

¹⁵ <http://www.rightwingwatch.org/post/schlafly-reinstate-the-house-committee-on-un-american-activities>.

Will you ensure that the Lobbying Disclosure Act and its reporting requirements are fully enforced, and that the President-elect's choice for U.S. Attorney in Washington, DC, makes it a priority?

10. The President-Elect has proposed that to fight terrorists, the United States should “take out their families.” Intentionally killing the family members of a terrorist would violate any number of laws, including the Geneva Conventions as well as U.S. statutes.

If you are confirmed, would you advise the President that targeting and killing family members of terrorists is not a legal option?

11. Too often, deportation cases are brought against immigrant children who do not have lawyers. Last year, I was appalled when I heard that an immigration judge stated it is possible to teach immigration law to three- and four-year olds. That is outrageous. These vulnerable children have often fled horrific violence in their home countries. Then they are expected to navigate our complex immigration laws on their own, without counsel. That hardly constitutes justice. The least we can do is give these children a fair day in court.

When Senator Coons asked you about this issue, you deflected, saying only that “I do not believe we can afford nor should we undertake to provide free lawyers for everybody that enters the country unlawfully.” You added simply that “Congress would need to decide what to do about it.” If confirmed as Attorney General, you will have broad discretion over the immigration courts system, including the appointment of immigration judges, and so I am asking about your personal views.

a. Do you believe that unaccompanied minors in immigration court should receive access to counsel? Do you agree that toddlers can learn immigration law sufficiently to understand the consequences they are facing and meet the requirements of due process?

b. If confirmed as Attorney General, how will you ensure that these vulnerable children receive due process?

12. The First Amendment and a free and vibrant press are at the heart of our democracy. As the President-elect takes office, conscientious whistleblowers may seek to provide the press with vital information about abuses. Too often, when the government or private litigants are unhappy with leaks, they seek to punish the journalists for doing their job. Given that the incoming White House Press Secretary has demanded a journalist apologize for attempting to ask the President-elect a question, and threatened to have him removed from future press conferences, I am deeply concerned about the incoming administration's commitment to bedrock First Amendment principles.

This Committee twice approved bipartisan federal media shield legislation that would establish a qualified privilege for journalists to protect their sources and the public's right to know. On both occasions, you voted against the shield bill.

- a. **Will you maintain existing Department regulations restricting subpoenas issued to the news media (28 CFR 50.10)?**
- b. **What limits do you believe the First Amendment places on attempts to stifle the free press? What role should the Justice Department play to protect journalists?**

13. We are grappling with a new wave of drug abuse, this time to powerful prescription opioids and heroin. Rural states, like my home state of Vermont, have been particularly hard-hit. You have said that “The best way for us to improve our pressure from the law enforcement end on drug trafficking in America is to increase prosecutions and investigations.” Enforcement will always play a role, and the Justice Department’s Drug Enforcement Administration plays a critical role in preventing the diversion and over-prescription of opioid painkillers. But at the root of every drug crisis is addiction. And we cannot arrest our way out of this problem. One important lesson from the failed war on drugs is that supply will relentlessly chase demand fueled by addiction – regardless of the penalties. We must confront addiction like we do any other public health crisis: through evidence-based prevention, treatment, and recovery efforts.

- a. **If you are confirmed, what will your strategy be to confront addiction to prescription painkillers?**
- b. **The Justice Department currently supports numerous diversion programs to keep certain offenders with addiction issues out of the criminal justice system, and naloxone programs to save addicts’ lives. Would you continue both the diversion programs and the naloxone programs?**

14. John Yoo’s 2002 OLC memo justifying torture stated that: “Any effort by Congress to regulate the interrogation of battlefield combatants would violate the Constitution’s sole vesting of the Commander-in-Chief in the President.”

- a. **You voted against both of Senator McCain’s amendments to ban torture and other cruel treatment by U.S. officials, first in 2005 and again last year. Do you agree with John Yoo that congressional regulation of torture is unconstitutional?**
- b. **Will you commit that you will not reinstate that OLC opinion, or any of the other OLC opinions justifying torture that were later rescinded?**
- c. **Is John Yoo participating in any capacity on the new administration’s transition team? What role is he playing? Have you been in contact with him in the last year?**

During the Bush Administration, John Yoo and Jay Bybee wrote OLC opinions stating that the President has the power, as Commander-in-Chief, to violate acts of Congress – both the criminal prohibition on torture, and the Foreign Intelligence Surveillance Act. That dangerous theory has been largely repudiated. Many of the memos they drafted or signed have been rescinded.

- d. Do you believe that the President has the authority under any circumstances to exercise a “commander-in-chief override” to violate acts of Congress?**

15. The Department of Justice is responsible for enforcing the National Voter Registration Act (NVRA), which sets forth certain voter registration requirements in connection with federal elections, including at Department of Motor Vehicle offices (the “motor-voter” registration process). The Tenth Circuit Court of Appeals recently held that a Kansas law requiring that voter registration applicants provide documentary proof of citizenship would cause a “mass denial of a fundamental constitutional right,” and enjoined the Kansas law from being enforced because it conflicts with the NVRA’s federal voter registration form. As a result, the Court held that the Kansas law was preempted by the NVRA and could not be enforced with respect to motor-voter applicants. Alabama has a similar law, but the secretary of state has not enforced it. If confirmed as Attorney General, you would be responsible for making decisions regarding enforcement of the NVRA and to following court decisions on the NVRA.

If confirmed, will your Justice Department take positions that are contrary to the Tenth Circuit’s ruling on the NVRA by asserting that a state may require Americans to submit proof of citizenship papers to register to vote at a DMV office?

16. American consumers and employees are increasingly waiving their legal rights by agreeing to forced arbitration clauses. These are often slipped into a contract and written in legal jargon. Through hearings in this Committee and other efforts, we have learned that the arbitration process has none of the safeguards of our court system. There is no rule of law or precedent. No transparency. No way to appeal an adverse judgment.

The secrecy of the arbitration process allows wrongdoing to go undiscovered and unpunished for years. Recent examples include Wells Fargo’s forced arbitration over millions of sham accounts, and Gretchen Carlson’s fight against sexual harassment at Fox News.

- a. If confirmed, what steps will you take to ensure that the Justice Department pursues and prosecutes companies who try to exploit consumers and employees by hiding behind one-sided arbitration agreements?**

On January 13, the Supreme Court granted certiorari in three related employment arbitration cases and consolidated them for argument. In one of those cases, *NLRB v. Murphy Oil*, the Justice Department argued in its petition for certiorari that arbitration agreements that bar work-related class actions by employees violate the National Labor Relations Act and are therefore unenforceable.

- b. If confirmed, do you commit that you will not change the government’s position in this case in any way?**

17. When opposing many of President Obama’s nominees, you argued that some were simply too political to be trusted in leadership positions at the Department of Justice. You complained that one nominee “has a record of and a reputation for very strong political activity”

and that “I am concerned whether he is capable of putting aside partisan beliefs.” You also stated that “The Attorney General is the top law enforcement officer in the country. This is not traditionally a political position. It is a law position.” I agree with you on that.

I don’t think that there is any doubt you are a conservative Republican politician. You have also been a loyal advocate for Donald Trump over the past year.

If we adopt your standard in opposing Justice Department nominees with “very strong political activity,” how can we support your nomination, or those of other potential Trump nominees?

18. Last August, the Department of Justice announced that the Bureau of Prisons would begin to phase out its use of private prisons. In her memo ordering the phase-out, Deputy Attorney General Yates wrote that private prisons “simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department’s Office of Inspector General, they do not maintain the same level of safety and security.” I strongly oppose the use of for-profit prison companies for detention purposes and believe this was a positive step toward ending the government’s reliance on such facilities.

- a. Do you believe that detention should be a for-profit business?**
- b. In the interests of better serving the goals of the Justice Department and reducing costs to the American taxpayer, will you continue this phase-out of for-profit prisons?**

19. You have been a strong and consistent proponent of the theory that the United States should treat terrorism suspects as so-called “enemy combatants.” You have argued that we should subject them to mandatory military custody and interrogation, without access to lawyers, and that we should try them by military commission if at all. You have argued that this should apply even to individuals picked up inside the United States, as this country is included in the “battlefield” in the war with al Qaeda.

- a. Do you believe this war framework should apply to American citizens picked up in the United States?**
- b. Should Timothy McVeigh, who killed 168 people in the Oklahoma City bombing, have been placed in military custody and treated as a wartime enemy?**
- c. If we are at war with al Qaeda, and if you believe the battlefield includes the United States, can we also use lethal force against al Qaeda suspects in the United States?**

20. In 2000, you described the Individuals with Disabilities Education Act (IDEA) as the “single greatest obstacle our educators face.” You then stated it creates “lawsuit after lawsuit, special treatment for certain children.” You said it is “a big factor in accelerating the decline in civility and discipline in classrooms all over America.”

a. Do you still hold believe that mainstreaming causes a “decline in civility and discipline in classrooms all over America?”

Last year, the Justice Department filed a lawsuit against Georgia alleging that its segregation of students with disabilities violates the Americans with Disabilities Act (ADA).¹⁶ You have previously argued in favor of such segregation and expressed skepticism of mainstreaming.¹⁷ In this lawsuit, the Justice Department noted that some of the facilities used by students with disabilities “are located in poor-quality buildings that formerly served as schools for black students during de jure segregation.”

b. If confirmed, will you continue to pursue this case, and bring others where students with disabilities are being segregated from their peers in violation of the ADA?

Last week the Supreme Court heard oral argument in *Endrew F. v. Douglas County School District*. The Justice Department filed an amicus brief in support of the petitioner, arguing that the IDEA requires states to provide more than *de minimis* educational benefits and in fact “give eligible children with disabilities an opportunity to make significant educational progress.”¹⁸

c. If you are confirmed, will the Department of Justice maintain its position in this case?

The ADA contains, at 42 U.S.C. § 12202, a waiver of state sovereign immunity. Twice during the Bush administration, in *Tennessee v. Lane* (2004) and *U.S. v. Georgia* (2006), the Justice Department argued, and the Supreme Court agreed, that the waiver was a valid exercise of Congressional power under Section V of the Fourteenth Amendment.

d. If confirmed, will you commit to defending the constitutionality of this exercise of Congress’s Section V power?

The voting rights of Americans with disabilities are protected by the ADA, the Voting Rights Act, and several other statutes.¹⁹ But several studies have found individuals with disabilities face barriers to the franchise that are exacerbated by voter ID requirements.²⁰

e. If confirmed, what steps will you take to ensure that the voting rights of Americans with disabilities are protected?

21. You claim to be a champion of the Voting Rights Act because you voted for VRA’s reauthorization in 2006. But aside from this single vote, you have consistently criticized the VRA. You have called it an “intrusive piece of legislation” and have questioned its constitutionality based on your belief that there is “relatively little present-day evidence” of voter

¹⁶ https://www.ada.gov/olmstead/documents/gnets_complaint.html.

¹⁷ <https://www.gpo.gov/fdsys/pkg/CREC-2001-11-07/pdf/CREC-2001-11-07-pt1-PgS11511.pdf#page=8>.

¹⁸ <http://www.scotusblog.com/wp-content/uploads/2016/11/15-827-amicus-petitioner-U.S.pdf>.

¹⁹ https://www.ada.gov/ada_voting/ada_voting_ta.htm.

²⁰ See, e.g., <http://www.vox.com/2016/4/1/11346714/voter-id-laws-disabilities>.

discrimination. When the 2013 *Shelby County* decision struck down a central provision of the VRA, you argued that the decision was “good news...for the South” and observed that “Shelby County never had a history of denying the vote.”

- a. **Since the *Shelby County* decision, some individuals have argued that there is no need to restore the protections of Section 5 because the Justice Department can still use Section 2 to bring lawsuits against states and localities that are discriminating against voters. But at the same time, some of these same individuals have argued that Section 2 might also be unconstitutional. Do you believe that Section 2 of the Voting Rights Act is unconstitutional?**

The current Justice Department is involved in several suits against states that have enacted severe voting restrictions that disproportionately harm minority voters. In two of these cases, courts of appeals found that voter ID laws in North Carolina and Texas were discriminatory and violated the VRA.

- b. **If you are confirmed, will the Justice Department maintain its current position in these cases – especially since federal appeals courts have found these voter ID laws to be discriminatory?**

22. The intelligence community has concluded that Russia intervened in the 2016 election in an effort to help elect Donald Trump. The report is available at https://www.dni.gov/files/documents/ICA_2017_01.pdf. Russian interference in our elections is larger than any candidate or political party. This is about protecting our democracy.

- a. **Do you accept the conclusion of the intelligence community that Russia was responsible for the hack of the DNC and Hillary Clinton’s campaign chair?**
- b. **Do you accept the conclusion of the intelligence community that Russia provided to Wikileaks the information that it stole?**
- c. **Do you accept the conclusion of the intelligence community that Russia engaged in these activities in order to interfere with the election in Donald Trump’s favor?**
- d. **Do you consider this to be illegal behavior, and a threat to our democratic process?**
- e. **Several of the President-Elect’s nominees or senior advisers have Russian ties. Have you been in contact with anyone connected to any part of the Russian government about the 2016 election, either before or after election day?**
- f. **Attorney General Lynch has confirmed that career officials are investigating Russian interference in the 2016 elections. If confirmed, will you commit to allowing this investigation to move forward? What will you do if the White House directs you to end the investigation?**

23. I am greatly concerned about racial disparities within our criminal justice system. In 2010, you agreed to reduce the dramatic disparity between sentences for crack and powder cocaine offenses, but you refused to eliminate the disparity altogether or to allow the changes in the Fair Sentencing Act to be retroactive.

But our justice system is full of disparities. Racial minorities still receive nearly 80 percent of all mandatory minimum sentences for drug offenses. For years I have worked with a bipartisan group of senators on this Committee to reduce mandatory minimum sentences for drug offenses. This bipartisan effort has had the strong support of the Justice Department and many others in law enforcement.

You were the most vocal opponent of those efforts on this Committee. That concerns me.

a. If you are confirmed to be the next Attorney General, what do you plan to do to reduce racial disparities in our criminal justice system?

In 2013, the Justice Department established a policy to reserve the most severe mandatory minimum sentences for high-level or violent drug traffickers. This was after the Sentencing Commission found that nearly half of mandatory minimum sentences in drug cases were imposed on lower-level offenders, not managers and importers. That is not what Congress intended. The often used 10- and 5-year minimums, for example, were intended to capture only serious traffickers – not low-level offenders like couriers.

b. If confirmed as Attorney General, would you leave the 2013 policy in place to focus these mandatory minimum penalties on high-level and violent offenders, consistent with the Justice Department’s current policy?

24. When you were Attorney General of Alabama, your office was reprimanded for prosecutorial misconduct in a case against a Birmingham-based company called TIECO. The judge in that case found “extensive evidence of serious and wholesale prosecutorial misconduct by the Office of the Attorney General.” While you were investigating TIECO, your office seized TIECO’s business records, and then made those confidential records available to another company, which then sued TIECO.

Ultimately, the criminal case against TIECO was thrown out because of the prosecutorial misconduct findings against your office. These findings are deeply troubling.

I understand that your deputy Attorney General, Bill Pryor, took over for you, and was heading up the office when the criminal case against TIECO was dismissed. But the misconduct occurred when the office was under your watch. And Attorney General Pryor did not appeal the dismissal.

a. Why do you think that the office you had led decided against appealing the misconduct order in that case? It was not just a reflection on you, but the entire office. Do you agree that your office mishandled the case?

- b. **The judge said “[T]he misconduct of the Attorney General in this case far surpasses in both extensiveness and measure the totality of any prosecutorial misconduct ever previously presented to or witnessed by this court.” How would you conduct the case differently, if you were able to do it over again?**

These findings also suggest a lack of understanding that sensitive documents collected by law enforcement officials must not be handed over to political allies. In the past year, DOJ and FBI have been involved in some very sensitive investigations, with very high stakes and a profound impact on our nation.

- c. **If confirmed, what steps would you take to guard against prosecutorial misconduct in the Justice Department?**

25. After the U.S. Supreme Court upheld marriage equality, Alabama Supreme Court Justice Roy Moore effectively ordered the probate judges in Alabama to refuse marriage licenses to gay couples. He was later suspended by the Alabama Court of the Judiciary for “disregard for binding federal law.”

- a. **Do you agree with the Alabama court’s decision to suspend Justice Moore for his actions?**
- b. **If confirmed, what actions would you take if any official refuses to issue a marriage license to a same-sex couple?**
- c. **When is it appropriate for a judge or other public official to disregard a Supreme Court decision?**

26. Last year, we enacted the most sweeping reforms to the Freedom of Information Act in decades. Our bill codified the “presumption of openness,” requiring all administrations to operate with transparency as their default setting. The DOJ Office of Information Policy is responsible for enforcing compliance with FOIA across the federal government. President-elect Trump has a demonstrably poor record on transparency. He has still refused to release his tax returns. He has even denied press credentials to reporters who criticize him.

If confirmed, you will be FOIA’s chief enforcer in the federal government. How will you enforce the “presumption of openness” in the face of the President-elect’s resistance to transparency?

27. I am very concerned about the abuse of administrative civil asset forfeiture laws, which are not overseen by a judge. As a former prosecutor, I believe that if there is a crime, you prove it. You do not let the suspect go and simply keep their cash because the seizure is protected by a low standard of proof and a labyrinth of administrative hurdles for the property owner. In a column criticizing your support for civil asset forfeiture, conservative columnist George Will compared this to “Alice in Wonderland” where the queen says “Sentence first—verdict afterwards.” Chairman Grassley and I have worked on a bill to ensure that this law enforcement tool does not devolve into a mere fundraising tool.

The Justice Department recently took some very modest steps to guard against questionable seizures of cash during road-side stops, and seizures of bank accounts where there is little evidence of a crime. If you are confirmed, will you commit to maintaining these limited protections for innocent property owners?

28. In your testimony you said “I deeply understand the history of civil rights in our country” and that “We must continue to move forward and never back.” One of the witnesses who testified in support of your nomination described you as “A son of the South who has had up-close experiences with our great civil rights movement”

a. Please describe your “up-close experiences” with the Civil Rights Movement.

That witness also stated, “Senator Sessions is not oblivious to the fact that we have more to do in the area of racial equality.”

b. In what areas do racial inequalities persist? What, specifically, are the appropriate remedies for these inequalities?

This past weekend, the President-elect tweeted criticisms of Congressman John Lewis. He said: “Congressman John Lewis should spend more time on fixing and helping his district, which is in horrible shape and falling apart (not to..... mention crime infested) rather than falsely complaining about the election results. All talk, talk, talk - no action or results. Sad!”

c. Do you agree with President-elect Trump that John Lewis is “All talk, talk, talk?”

29. While your hearing was happening, Congressman Brooks stated “in a radio interview on Tuesday that criticism of Alabama Sen. Jeff Sessions...is part of an ongoing ‘war on whites’ by Democrats.”²¹

Do you agree that Democrats are waging “war on whites?”

30. According to several news reports, Florida Attorney General Pam Bondi will hold a position in the Trump administration. In 2013, while Bondi’s office was considering joining a lawsuit against Trump University for fraud (which was settled two months ago for \$25 million), Mr. Trump donated \$25,000 to a group supporting Bondi. The donation was made illegally from Mr. Trump’s foundation, and he was forced to reimburse the foundation and to pay a penalty to the IRS. One month after the donation was received, Bondi’s office decided not to join the lawsuit against Mr. Trump.

Do you believe that the decision not to join the lawsuit against Trump University, following Mr. Trump’s illegal donation, raises concerns questions about a quid pro quo?

²¹ <http://www.cnn.com/2017/01/11/politics/kfile-mo-brooks-war-on-whites>.

31. In 2015, after Chairman Grassley and I wrote several letters expressing concerns about the use of cell-site simulators (sometimes called “Stingrays”), which can sweep up cell signals indiscriminately from cell phones in their vicinity, the Justice Department issued new policy guidance governing their use.²²

Will you commit to keeping that policy in place?

32. In 2010, the Antitrust Division and the U.S. Department of Agriculture held five joint public workshops to explore competition issues affecting the agricultural sector and the appropriate role for antitrust and regulatory enforcement. Many in agriculture were very frustrated that those workshops, although they highlighted many concerns and antitrust problems in agriculture, did not appear to lead to any new enforcement or stricter actions by the Department of Justice in the agriculture sector.

- a. In your opinion, are there areas within the agriculture sector where the Department should take a stronger look at competition affecting agriculture?**
- b. Do you believe that there are actions that the Department should take regarding consolidation and the conduct of dominant players in the dairy industry? If confirmed, what will you do to address the long-standing concerns to make sure that dairy farmers, small processors, and consumers are treated fairly in the marketplace?**

In the last quarter-century, as highlighted in the Judiciary Committee hearing on September 20, 2016, the agricultural industry has consolidated dramatically into what many refer to as the “Big Six” companies that now control the market for seeds and agrochemicals. Due to several mergers proposed last year, the market may soon shift to the “Big Four.” Many concerns have been raised in the agriculture industry that this will raise barriers to entry for new innovators and increase the prices that farmers pay.

- c. How will the proposed agriculture mergers involving Dow, DuPont, Monsanto, Bayer, and Syngenta affect small businesses and the prices our farmers pay?**
- d. How should the Justice Department evaluate these proposed agriculture mergers? Do you believe that the effects of these mergers on American farmers and consumers should be reviewed collectively?**

Last year the French-Multinational food-products corporation Danone proposed to acquire White Wave Foods, Inc. (“White Wave”), which many in the organic dairy sector fear could lessen producers’ leverage in any contract negotiations on pay price and contractual obligations, effectively creating a monopsony.

- e. If confirmed, what will you do to scrutinize this proposed acquisition and ensure that the Department applies conditions to this merger to alleviate the very real monopsony concerns that have been raised?**

²² <https://www.justice.gov/opa/file/767321/download>.

According to reports you have accepted contributions from Monsanto and Bayer, two companies with mergers currently being reviewed by the Department of Justice. I have seen reports that President-elect Trump also holds stock in Monsanto.

- f. If confirmed, how will you ensure that you and the Department of Justice will remain objective in any review and scrutiny of these mergers? Will you recuse yourself from reviews of mergers involving companies from which you have received campaign contributions?**
- g. If confirmed, will you ensure that the President-elect provides solid evidence to substantiate the claims made by his Transition Team that he sold off all of his investments in the stock market last year, to ensure that he does not have a financial interest in the mergers and acquisitions that the Department of Justice reviews?**

I am deeply concerned by reports that “Top executives of Bayer AG and Monsanto Co. met with President-elect Donald Trump...to pitch the benefits of their planned deal.”²³

- h. If confirmed, what steps will you take to ensure that reviews of proposed mergers are free of political considerations?**

33. If confirmed, you will be the first Attorney General in 12 years to have previously been an elected official, which raises concerns about decisions the Justice Department may make regarding your campaign contributors. The Project on Government Oversight has found that approximately one-third of your top donors have “current, known matters involving the Department of Justice.”²⁴ As others have noted, you were also a strong supporter and surrogate of the President-elect, which raises concerns about how you would handle Department actions against Mr. Trump or businesses to which he is connected. In a November 5, 2016, op-ed,²⁵ you and several other prominent Trump supporters harshly criticized Attorney General Lynch for not recusing herself from matters involving Hillary Clinton because Lynch had had a “39-minute conversation” with President Bill Clinton.

- a. By the recusal standard that you put forth in that op-ed, is it fair to expect you to recuse yourself from any matters regarding Mr. Trump or his finances?**
- b. In cases or investigations involving Mr. Trump or your own campaign contributors, what will your recusal standard be, if not the standard articulated in the op-ed?**

34. At a Senate Judiciary Committee executive business meeting on March 26, 2015, you voted against reporting my Bulletproof Vest Partnership Grant Program Reauthorization Act, which reauthorized a grant program that has helped state and local law enforcement agencies to

²³ <http://www.wsj.com/articles/bayer-monsanto-ceos-pitch-deal-to-trump-1484166068>.

²⁴ <http://www.pogo.org/our-work/reports/2017/at-least-one-third-of-attorney-general-nominees-top-donors-have-matters-involving-doj.html#fn3>.

²⁵ <http://www.foxnews.com/opinion/2016/11/05/giuliani-sessions-keating-et-al-time-for-loretta-lynch-to-appoint-special-counsel.html>.

purchase more than 1.2 million protective vests. This program's reauthorization will ensure that more than 200,000 more officers receive such vests. You also voted against reporting the Rafael Ramos and Wenjian Liu National Blue Alert Act, which created a national alert system for law enforcement officers who are missing, killed, or seriously injured in the line of duty. The bills were reported by voice vote, but you requested to be recorded as a "nay" to both. Despite your opposition in Committee, both bills ultimately passed and are now law. These bills will save officers' lives, and both received enthusiastic support from the law enforcement community.

Why did you vote against my Bulletproof Vest Partnership reauthorization? Why did you vote against Blue Alert?

35. At your confirmation hearing, in response to a question of mine on whether you would use our limited Federal resources to prosecute sick people who followed their state laws with regards to medical marijuana, you said "I won't commit to never enforcing federal law, Senator Leahy, but absolutely it's a problem of resources for the federal government."

a. Does this mean you would consider arresting and prosecuting patients who follow their state medical marijuana laws?

Congress, through an appropriations amendment, has decided the federal government should not dismantle state medical marijuana programs. Since 2014, the Justice Department cannot "prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana." Last August, in *United States v. McIntosh*,²⁶ the U.S. Court of Appeals for the 9th Circuit held that "at a minimum, [this amendment] prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws."

b. Would this congressional prohibition prevent the DEA from raiding medical marijuana dispensaries that are compliant with state law, or from shutting down banks or other businesses that work with dispensaries?

36. Article 36 of the Vienna Convention on Consular Relations (VCCR) requires parties to the treaty, including the United States, to promptly inform, upon arrest, nationals of signatory nations, that they have the right to meet with consular officials. Thousands of Americans are arrested in foreign countries every year, sometimes on questionable charges. The right to visit with U.S. consular officials provides U.S. nationals the ability to communicate with their families, retain competent legal counsel, and receive assistance from the U.S. Government. To help ensure domestic compliance with Article 36, the U.S. Supreme Court adopted an amendment to Rule 5 of the Federal Rules of Criminal Procedure mandating that a judge presiding at the defendant's initial appearance inform "a defendant who is not a United States citizen [that he or she] may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant's country of nationality that the defendant has been arrested."

²⁶ No. 15-10117 (9th Cir. 2016).

- a. **Do you agree that this amendment to the Federal Rules of Criminal Procedure is a helpful change that will ensure Article 36 compliance at the Federal level? What other steps would you take to ensure compliance with Article 36?**

There are a number of well documented cases in which the U.S. is not in compliance with our Article 36 obligations, and that noncompliance has strained our relationships with a number of important allies including Great Britain and Mexico. President Bush attempted to remedy one set of cases in 2008 through Executive Memorandum. However, the Supreme Court in *Medellín v. Texas*²⁷ recognized the obligation but instructed that Congress must pass legislation to provide a remedy in these cases.

- b. **In order to meet our legal obligations and protect the interests of U.S. national traveling abroad, would you work with the Congress to enact legislation that provides a mechanism to redress failures to provide the legally required VCCR notifications?**

37. At a hearing before the Senate Select Committee on Intelligence in 2016, the Director of the National Security Agency and Commander of U.S. Cyber Command Admiral Mike Rogers testified that “[e]ncryption is foundational to the future. And anyone who thinks we are just going to walk away from that, I think, is totally unrealistic.” Secretary of Defense Ash Carter has similarly stated that “encryption is a necessary part of data security and strong encryption is a good thing. . . . [W]e need our data security and encryption to be as strong as possible.”

In addition to Admiral Rogers and Secretary Carter, countless other national security experts have emphasized that strong encryption is vital to our national security and that any attempt to weaken encryption only makes Americans less secure – particularly when the United States and the American people face increased threats of cyberattack from hostile nation-states and cybercriminals.

Do you agree with NSA Director Rogers, Secretary of Defense Carter, and other national security experts that strong encryption helps protect this country from cyberattack and is beneficial to the American peoples’ digital security?

²⁷ 552 U.S. 491 (2008).