

Nomination of Jeff Sessions to be Attorney General of the United States
Questions for the Record
Submitted January 17, 2017

QUESTIONS FROM SENATOR LEAHY

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?

RESPONSE: My principal concerns about the 2013 VAWA reauthorization centered on the tribal jurisdiction provision. The 2013 Act also includes a provision that prohibits recipients of federal grants (such as women’s domestic-violence shelters) from discriminating on the basis of, among other things, sex, gender identity, and sexual orientation. This provision includes an exception that a grantee may carry out sex segregation or sex-specific programming if it can show that such programming is “necessary to the essential operation of a program,” and if it provides comparable services to individuals who cannot be provided with sex-segregated or sex-specific programming. My and other Senators’ concerns about this provision centered on the fact that, on its face, its broad prohibition would appear to preclude operation of a women-only (or women and children-only) domestic violence shelter, and the Act’s exception to this prohibition appears narrow and is unclear. Although a woman who has been the victim of violence at the hands of a husband or boyfriend may be better served by services that are provided outside the presence of men, it is unclear whether a women’s domestic-violence shelter would be able to meet the Act’s requirement that it show that providing women-only services is “necessary to the essential operation” of the shelter. I believe that, in some circumstances, it is appropriate for VAWA grant recipients to provide services that are limited to women. To the extent that VAWA 2013’s new anti-discrimination provision is construed to, for example, prevent or make it difficult for a women’s domestic violence shelter to provide services that it believes should be limited only to women, I continue to have serious reservations about that provision. In the past, I have received strong objections from a respected women and children’s shelter on this very issue.

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”?

RESPONSE: If I am confirmed as Attorney General, I will enforce all federal laws, including the 2013 reauthorization of VAWA. I understand that a pilot program has been initiated that seeks to conform tribes’ exercise of criminal jurisdiction over non-Indians to the requirements of the Sixth Amendment. I will carefully study this program before reaching any final legal conclusions about the VAWA tribal jurisdiction provision.

Sexual assault and other violent crime on Indian reservations are very serious problems—in some places, the problem has reached epidemic proportions. The federal government exercises criminal jurisdiction over many Indian reservations. If I am confirmed as Attorney General, I will be committed to ensuring that federal law-enforcement resources are fully deployed to investigate and prosecute crime on federal reservations, and will request additional resources where existing resources are inadequate. Finally, I would note that on many Indian reservations, state and local authorities exercise criminal jurisdiction. State and local law-enforcement resources greatly exceed those of federal and tribal governments combined. On the exclusively federal reservations where federal law enforcement has proved to be inadequate to reduce high levels of violent crime, Congress may consider allowing state and local authorities to exercise criminal jurisdiction. State and local law enforcement has proven effective on many existing Indian reservations, and the extension of such criminal jurisdiction to both Indians and non-Indians in Indian country does not offend constitutional guarantees.

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”?

RESPONSE: In a statement on the Senate floor on July 20, 2009, I outlined my opposition to the Act. Early in the speech, I stated that “the hate crimes amendment . . . has been said to cheapen the civil rights movement.” Those were not *my* words. However, I did note concerns about the variances in approach to the historic civil rights laws and the hate crimes legislation, and went on to outline those concerns. Regardless of my position then, the Act is now federal law and if I am fortunate enough to be confirmed as Attorney General, I will enforce it and all other federal laws.

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?

RESPONSE: If I am confirmed, I will ensure that these programs, and the funds made available by Congress, are fully employed in the most effective manner possible in furtherance of their stated missions.

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?

RESPONSE: Should I be confirmed as Attorney General, I will faithfully enforce all federal laws, including those regarding domestic violence. It is my understanding is that if an individual receives relief from removal under the laws of the United States, then they will not be removed from the United States.

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?

RESPONSE: I have not studied the issue in this context and am not familiar with the details of the President's business and financial holdings as they relate to these issues. Therefore, I am not in a position to offer even an informal opinion on it. If confirmed as Attorney General, I would provide legal advice on such matters only after examining the relevant facts and circumstances presented, and consulting with the Office of Legal Counsel and any other component of the Department having expertise bearing on such matters.

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?

RESPONSE: If confirmed as Attorney General, I would provide legal advice on such matters only after examining the relevant facts and circumstances presented, and consulting with the Office of Legal Counsel and any other component of the Department having expertise bearing on such matters. I am not aware of a basis to recuse myself from such matters. If a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed. As I

made clear at my confirmation hearing, I will always work within the law and the established procedures of the Department.

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.

RESPONSE: The question posited is not one on which I have devoted any study, and the answer would depend on a number of facts and specific circumstances. I am not aware of the details of any of the arrangements in the case of Trump Tower and the lease in question. Therefore, I am not in a position to offer even an informal opinion.

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?

RESPONSE: The question posited is not one on which I have devoted any study, and the answer would depend on a number of facts and specific circumstances. Therefore, I am not in a position to offer even an informal opinion on it. If confirmed as Attorney General, I would provide legal advice on such matters only after examining the relevant facts and circumstances presented, and consulting with the Office of Legal Counsel and any other component of the Department having expertise bearing on such matters.

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.

e. What is the Justice Department’s role in enforcing the Emoluments Clause?

RESPONSE: If confirmed as Attorney General, I will take all appropriate actions in the course of my duties, including providing legal advice upon request, to ensure that office holders comply with their constitutional obligations. While I am not aware of a federal law that directly charges the Department of Justice with enforcing the Emoluments Clause, the

Department is charged with enforcing conflicts of interest provisions under the U.S. Code, such as those under 18 U.S.C. § 207, and I will enforce the laws that demand my action.

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

RESPONSE: I am not aware of any cases in which the Foreign Emoluments Clause has presented a justiciable issue, and I am unable to answer that question in the abstract. The Supreme Court has set forth the test for Article III standing in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), and subsequent cases. If I am confirmed as Attorney General, and a case presents itself involving the Emoluments Clause, the Department of Justice would, I believe, apply that test in connection with the facts and circumstances of a particular case.

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?

RESPONSE: The question posited is not one on which I have devoted any study, and the answer would depend on a number of facts and specific circumstances, which do not exist at this time. Therefore, I am not in a position to offer even an informal opinion on it. If confirmed as Attorney General, I would provide legal advice on such matters only after examining the relevant facts and circumstances presented, and consulting with the Office of Legal Counsel and any other component of the Department having expertise bearing on such matters.

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?

RESPONSE: The question posited is not one on which I have devoted any study. Therefore, I am not in a position to offer even an informal opinion on it. However, President Trump has stated that he will comply with his legal ethical obligations, and in fact, that he will take additional steps beyond what may be required under the Constitution.

i. Doesn't the public interest demand full financial disclosure and divestment?

RESPONSE: As required by law, President Trump released a financial disclosure form that is available to the public, which I have not studied. It is also my understanding that President Trump has taken steps to isolate himself from his business interests and to devote

himself fully to the duties of the presidential office.

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?

RESPONSE: I have not studied this issue and am unable to provide even an informal legal opinion regarding a hypothetical situation involving the prudence or legality of a family member’s participation in discussions or meetings. The answer to that question would depend on a number of facts and specific circumstances, which do not exist at this time.

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?

RESPONSE: I am not familiar with Speaker Gingrich’s comments or the context in which they were made and am unable to comment on this.

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?

RESPONSE: As the Attorney General of the State of Alabama, I represented the Executive branch of the State government. However, I had a duty to the people of the State to uphold and defend the State Constitution and the laws of the State. The duties of the Attorney

General require that settlements and decrees are properly entered into and are not violative of law. I would also note that it is common for a successor administration to have a different view from the preceding administration on whether agreements to settle cases should have been made and whether they should be continued.

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?

RESPONSE: As the Attorney General of the State of Alabama, I believed then and I believe now that all applications to courts by my office were made on the basis of evidence. A trier of fact or law can, and often does, come to different conclusions based upon the set of facts presented by both sides in a dispute.

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?

RESPONSE: If I am confirmed, I will enforce the laws as passed by Congress.

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. 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?

RESPONSE: Yes, Sheriff Clarke and I crossed paths on the campaign trail from time to time. I have no knowledge of any such investigations. If a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed.

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?

RESPONSE: Although I have not discussed this with the President, I expect that, consistent with prior Administrations, the Department of Justice’s Office of Legal Policy will provide support to the President in his selection of judicial nominees and will assist in shepherding them through the nomination process.

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.

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?

RESPONSE: I expect the President to nominate qualified individuals who will apply the laws as written and adhere to the Constitution.

I supported Judge Kallon’s nomination to the United States District Court for the Northern District of Alabama in 2009 and worked to assist his confirmation. As you know, Senators exercise a more exacting review for nominees to the circuit courts, which I never had the opportunity to do in this case. I participated in negotiations with Senator Shelby and the White House in an attempt to move a diverse group of nominations for Alabama but those negotiations did not conclude.

As you may recall, ten of President George W. Bush’s circuit court nominees were not confirmed and were returned at the end of his Administration. Of note, Judge William Smith was nominated to the First Circuit on December 6, 2007, and was rated “Well Qualified” by the American Bar Association (ABA), but neither Senator Reed nor Senator Whitehouse returned blue slips on his nomination, citing the need to conduct a “through and independent review” of his record and stating: “Before giving someone a lifetime appointment to the federal bench we need to carefully review their record.”¹ Previously, Senator Whitehouse had suggested in September 2007 that it was too late in the president’s term to consider a nomination to the First Circuit. Also notable is the nomination of Mr. Shalom Stone to the Third Circuit on July 17, 2007. He was rated “Substantial Majority Qualified/Minority Well Qualified” by the ABA, but neither Senator Lautenberg nor Senator Menendez returned blue slips on his nomination. Similarly, U.S. Attorney Rod Rosenstein was nominated to the Fourth Circuit on November 15, 2007, and was rated “Unanimous Well Qualified” by the ABA, but neither Senator Cardin nor Senator Mikulski returned blue slips on his nomination.

¹ John Mulligan and G. Wayne Miller, “Bush selects Smith for U.S. appeals court,” *The Providence Journal*, Dec. 7, 2007.

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?

RESPONSE: If confirmed as Attorney General, my role will be different than has been as a U.S. Senator serving on the Judiciary Committee. Decisions on committee and Senate process will be the responsibility of members of the Senate.

During the previous Republican administration, many Senators were concerned that the administration circumvented its 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?

RESPONSE: I expect the President to nominate qualified individuals who will apply the laws properly and adhere to the Constitution. I have no reason to expect that the Trump Administration will deviate from precedent set by prior administrations in consulting with home state Senators when selecting judicial nominees.

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.”

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.”

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.”

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.

RESPONSE to (a) – (c): First, I am not a board member or even a member of this organization. The judicial nominees I questioned were active members of the ACLU and some held offices such as chair of a litigation committee. I then respectfully asked the nominee if they shared the ACLU’s position, the organization of which they were a member or officer, on issues such as drug legislation, child pornography, and the like. As I recall, I have voted for many nominees who were affiliated with the ACLU. I believe that all of us have a responsibility to work for harmony and not discord. While I do not hold the views that these questions attribute to Mr. Horowitz, I have no knowledge of whether he actually said the remarks or in what context.

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

RESPONSE: The Annie Taylor “Daring the Odds” award to which this question refers was listed on my original Questionnaire on page 4, fifth from the bottom of the page. My limited involvement with the David Horowitz Freedom Center and Restoration Weekend is disclosed in my Questionnaire. A number of prominent people have received that award or spoken at events sponsored by Mr. Horowitz, including Senators Sam Nunn, Zell Miller, Joe Lieberman, and Lindsay Graham, former Mayor of Washington D.C. Adrian Fenty, women’s rights advocate Gloria Allred, civil rights activist and president of Operation Hope, John Bryant, and Governors George W. Bush, George Voinovich, Tim Pawlenty, and Sam Brownback. I have spoken at the Weekend or participated in several panel discussions over the years. I am not aware of any other involvement with the Freedom Center.

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.”

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

RESPONSE: I have not and will not associate myself with any racially insensitive or discriminatory remarks made by anyone. I have no knowledge of the information on which CPAC relied in forming their opinion of the gentleman in question.

f. Do you believe it is acceptable for the Attorney General to associate with Mr. Gaffney and his extremist organization?

RESPONSE: No government official should lend the prestige of his or her office to any individual or organization that does not reflect American values.

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.” 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.” 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.” Do you condemn the offensive allegation that President Obama is a traitor?

RESPONSE to (g) – (i): While I do not hold the views that this question attributes to Mr. Gaffney, I have no knowledge of whether he actually said these remarks or in what context.

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?

RESPONSE: My involvement has been disclosed in my Questionnaire to the best of my recollection. In addition, my staff and I conducted a review of my own files, searches of publicly available electronic databases, and consultation with the Senate Library, the Congressional Research Service, and relevant committee libraries and historical offices within the Senate. In an effort to be as responsive as possible, my staff also conducted further review of existing files from the era, including historical archives maintained in electronic research databases such as LexisNexis, WestLaw, and ProQuest, public search engines, and Internet archive services that maintain records of websites that no longer exist. Additionally, as records from my time as United States Attorney and Attorney General of the State of Alabama existed before the proliferation of the Internet and before electronic storage was as readily available as it is today, most of those records do not exist in any electronic databases of which I am aware, and my staff and I consulted with the Alabama Attorney General’s Office and with the United States Attorney’s Office for the Southern District of Alabama to locate archived files from my time in those offices. All responsive records identified or located as a result of these searches were submitted to the Committee.

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.”

k. Do you disavow and condemn Mr. Flynn’s remarks?

RESPONSE: I have not made such a statement and will not associate myself with any racially or religiously insensitive or discriminatory remarks. I have no knowledge whether the gentleman referred to in this question actually said the remarks that the question attributes to him or in what context.

l. Do you believe that the President’s national security advisor should refer to Islam as a “malignant cancer”?

RESPONSE: I have not made such a statement and will not associate myself with any racially or religiously insensitive or discriminatory remarks. I have no knowledge whether the gentleman referred to in this question actually said the remarks that the question attributes to him or in what context.

m. Do you believe the National Security Advisor should be associated with organizations that promote anti-Islamic bigotry and conspiracy theories?

RESPONSE: I have not made such a statement and will not associate myself with any racially or religiously insensitive or discriminatory remarks. I have no knowledge whether the gentleman referred to in this question actually said the remarks that the question attributes to him or in what context.

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 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.

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

RESPONSE: As with any case, any legal issues raised would depend on the actual facts of any such relationship.

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” and increasing the pay gap between men and women, and arguing that married women by definition cannot be raped by their husbands.

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. Do you agree with that statement?

RESPONSE to (o) – (r): While I do not hold the views that this question attributes to the deceased woman referred to in this question, I have no knowledge of whether she actually said

these remarks or in what context.

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

RESPONSE: I have been friends with some of the members of the local organization over the years and I have attended a few events, to my recollection. My involvement has been disclosed in my Questionnaire to the best of my recollection. In addition, my staff and I conducted a review of my own files, searches of publicly available electronic databases, and consultation with the Senate Library, the Congressional Research Service, and relevant committee libraries and historical offices within the Senate. In an effort to be as responsive as possible, my staff also conducted further review of existing files from the era, including historical archives maintained in electronic research databases such as LexisNexis, WestLaw, and ProQuest, public search engines, and Internet archive services that maintain records of websites that no longer exist. Additionally, as records from my time as United States Attorney and Attorney General of the State of Alabama existed before the proliferation of the Internet and before electronic storage was as readily available as it is today, most of those records do not exist in any electronic databases of which I am aware, and my staff and I consulted with the Alabama Attorney General's Office and with the United States Attorney's Office for the Southern District of Alabama to locate archived files from my time in those offices. All responsive records identified or located as a result of these searches were submitted to the Committee.

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. 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?

RESPONSE: If I am fortunate enough to be confirmed, I will enforce the law. U.S. Attorneys are presidentially-appointed subject to confirmation by the Senate and report to the Attorney General. The Attorney General outlines the enforcement priorities for the Department and may set rules for how cases are handled.

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?

RESPONSE: Yes, intentionally targeting and killing family members of terrorists would not be 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?

RESPONSE: My understanding is that immigration laws of the United States provide all aliens with the privilege of being represented by the counsel of their choosing in civil immigration proceedings. It is also my understanding that Congress has specified that, while an alien retains such a privilege, any such representation must occur at no expense to the government. The sole exception to this is codified in section 1232(a)(5)(C) of Title 8, which charges the Department of Health and Human Services with ensuring:

to the greatest extent practicable and consistent with section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in subsection (a)(2)(A), have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking. To the greatest extent practicable, the Secretary of Health and Human Services shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.

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

receive due process?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will faithfully enforce the duly-enacted immigration laws of the United States, which are determined by Congress.

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)?

RESPONSE: I have not had the occasion to study the outgoing Administration's regulations on this matter. If I am confirmed as Attorney General, I would discuss this matter with the Justice Department's career experts before making any decision to maintain or modify the current regulations. I would note, however, that the existing regulations did not prevent the outgoing Administration from aggressively investigating and prosecuting a larger-than-normal number of leak cases. Leaks of classified information can be damaging to U.S. national security, and can also violate the federally-protected rights of other federal employees—for example, in cases where restricted information from an individual's personnel file is leaked to the press. In some cases, the only way to investigate wrongdoing is by subpoena. Such subpoenas to reporters, however, raise concerns about intimidation or restriction of the press. A free press plays a vital role in ensuring the accountability of powerful institutions in our society. For these reasons, I support Justice Department caution when contemplating the use of a subpoena to obtain material from a journalist.

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?

RESPONSE: The First Amendment generally proscribes governmental efforts to "stifle" a free press. In addition to being careful with the use of subpoenas against journalists, I believe that the Justice Department protects journalists by enforcing the criminal laws when a journalist is the target of threats or extortion.

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?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will work with law enforcement partners to enforce the law, reduce the availability of illicit drugs that cause addiction, and support treatment and recovery efforts to help addicted individuals overcome their addiction. The *New England Journal of Medicine* has reported that the heroin surge is a result of more availability, higher purity and lower price. Enforcement impacts these factors.

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?

RESPONSE: Many diversion programs, such as drug courts, have proven to be effective solutions for some offenders. I have been a strong supporter of drug courts. Naloxone, likewise, has shown promise as a way to help save lives of some individuals who have overdosed on heroin and other opioids. If I am fortunate enough to be confirmed as Attorney General, I will support efforts to provide appropriate opportunities and support to drug users looking to turn their lives around, as well as efforts to ensure first responders are able to assist in saving lives destroyed by addiction. To date, treatment has not proven universally successful. Prevention of use and addiction is critical, also.

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?

RESPONSE to (a) – (b): Federal law is clear that it is unlawful for either the military or our

intelligence agencies to subject detainees to cruel, inhuman, or degrading treatment, and that it is illegal to use interrogation techniques that are not prescribed by the Army Field Manual. I believe that this statute is constitutional, and thus do not anticipate issuing any opinion that does not require compliance with this statute.

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?

RESPONSE: I have not been in contact with Mr. Yoo within the last year, and do not know of any work that he has done for the transition team.

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?

RESPONSE: The President does have some constitutionally assigned powers that cannot constitutionally be rescinded by Congress. I have no reason to believe that the existing law referred to above contravenes these constitutional limits.

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?

RESPONSE: I believe the case referred to in the above question is *Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016). As the timeline for U.S. Supreme Court review has not yet terminated, and because the Department of Justice may wish to enter an appearance in the case if U.S. Supreme Court review is sought or granted, it would be inappropriate for me to comment on future plans with respect to enforcement of the panel decision at this time. If I am confirmed, I will carefully and objectively evaluate the facts and circumstances of each case

and endeavor to uphold and defend the Constitution in the pursuit of justice.

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?

RESPONSE: In any contract, the parties must agree to all the terms and clauses included in the contract document. This includes the arbitration clause. This is basic contract law, and the basic premise of the Federal Arbitration Act for over 75 years. If the contract was obtained through exploitation, fraud or coercion, then the consequences of those actions, whether under contract law or the criminal law, will apply. Acceptable arbitration provisions in contracts should be conducted fairly and, in the past, I have offered detailed legislation to ensure fairness.

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?

RESPONSE: Because this case involves pending litigation in which the Department is a party, it would be unwise for me to comment further. If I am fortunate enough to be confirmed as Attorney General, I will thoroughly review this case in conjunction with the expert and career attorneys in the Department of Justice to make a decision about how best to proceed.

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?

RESPONSE: You and I agree that the key qualifications for someone wishing to occupy the office of the Attorney General is a commitment to the rule of law, independence, and integrity. If confirmed, I will enforce and defend the law and the Constitution, regardless of my own personal and philosophical views.

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?

RESPONSE: I believe that detention facilities should be safe, secure, and humane, both for inmates and for correctional staff, regardless of whether the facilities are publicly or privately operated. They should fulfill their role in an efficient and cost-effective manner.

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?

RESPONSE: I am generally aware of concerns regarding Deputy Attorney General Yates’ memorandum, and whether its conclusions are fully supported by the evidence. If I am fortunate enough to be confirmed as Attorney General, I will carefully evaluate the relevant evidence and the Department of Justice’s policies to ensure that its detention facilities are safe, secure, humane, and represent an effective use of resources.

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?

RESPONSE: Under the historic rules of war and U.S. law, the United States may detain an active member of al Qaeda or other enemy combatants for as long as the conflict persists. As you know, in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), a plurality of the Supreme Court stated that “[t]here is no bar to this Nation’s holding one of its own citizens as an enemy combatant.” The plurality relied in part on *Ex Parte Quirin*, 317 U.S. 1 (1942), in which the Court held that Congress authorized the military trial of a U.S. citizen who entered the country with orders from the Nazis to blow up domestic war facilities, but was captured before he could execute them. See also *Padilla v. Hanft*, 423 F.3d 386 (4th Cir. 2005); *Al-Marri v. Pucciarelli*, 534 F.3d 213 (4th Cir. 2008). Captured citizens who are at war with the U.S., can of course, contest their detention in federal court by writ of *habeas corpus*.

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?

RESPONSE: I have not studied this case in any depth and would want to consult with legal experts in this field before reaching a definitive opinion on such matters. It does appear that McVeigh’s actions, while a heinous act of terrorism, would not have constituted part of a campaign of war against the United States.

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?

RESPONSE: Law enforcement officers may, even in non-terrorism criminal cases, use lethal force to defend themselves and others. Congress has declared that the U.S. may use lethal force against al Qaeda and associated forces, but great care should be taken before using lethal force in the U.S.

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?”

RESPONSE: The phrases cited derive from a speech I gave on the Senate floor during the last reauthorization of the Individuals with Disabilities Education Act. I believe it is important that those phrases be looked at in context, so I have provided the passages from the speech in which those phrases were used.

In addition, I would note that the issues I raised were very real problems that Senators on both sides of the aisle, including Senator Kennedy, understood the importance of addressing, which is why we developed a solution that passed into law with bipartisan support. Indeed, during a July 17, 1997, Judiciary Committee markup on another bill, while debating an amendment, Senator Feinstein offered to clarify the IDEA to ensure that all students who

bring a dangerous weapon to school would be subject to the same discipline, I said:

“I will really tell you what I think happened from what I understand is that the Disabilities Act made it much more difficult for schools to discipline those who have disabilities. And they felt like they wanted clear language that said if they brought a dangerous weapon to school, they wouldn’t have to be subjected to many of the protections that the Disabilities Act provides.”

In response to my statement, Senator Feinstein said: “That is absolutely correct. Well said.”

My concern was that the legal promises set forth under the IDEA created confusion, discord, and difficulties for teachers and principals. My legislation, carefully drafted, received strong bipartisan support and improved the IDEA, not harmed it. Any suggestion that I somehow oppose special-needs children receiving the education they deserve is simply false. If I am fortunate enough to be confirmed as Attorney General, I will be committed to ensuring the equal protection of the law for all Americans and the protections inherent therein.

Floor Remarks, May 2000:

“Over 25 years ago, for example, we passed a federal disabilities act. It was designed to mandate to school systems and require that they not shut out disabled kids from the classroom and that they be involved in the classroom. If they have a hearing loss, or a sight loss, or if they have difficulty moving around, in a wheelchair, or whatever, the school system must make accommodations for them. They would be mainstreamed. They would not be treated separately.

That was a good goal, a goal from which we should not retreat. I hope no one interprets what I say today as a retreat from that goal. But in the course of that time, we have created a complex system of Federal regulations and laws that have created lawsuit after lawsuit, special treatment for certain children, and that are a big factor in accelerating the decline in civility and discipline in classrooms all over America. I say that very sincerely.

...

It was really brought to my attention a little over a year ago when a long-time friend, District Attorney David Whetstone, in Baldwin County, AL, called me about a youngster in the school system classified as having a disability. It is called “emotional conflict.” He was emotionally conflicted. He could not, or would not, behave. An aide would meet him in the morning at his home, get on the bus with him, and go to school, sit through the class all day, and ride home on the school bus with him. This student was known to curse principals and teachers openly in the classroom. Because he was a disabled student, he could not be disciplined in the normal way. The maximum 10-day suspension rule-and 45 days is the maximum a child can be disciplined under this federal law and then they are back in the classroom. One day, he attacked the school bus driver on the way home.

The aide tried to restrain him. He then attacked the aide. District Attorney Whetstone told me, ‘I was never more stunned when I talked to school officials and they told me this is common in our county.’

We have children we cannot control because of this federal law. He came to Washington, and we sat up in the gallery and talked about it. I respect David Whetstone and his views. He said this cannot be. I began to ask around, is this true? As a matter of fact, this very incident was focused on in Time magazine. There was a full-page story about it called ‘The Meanest Kid in Alabama,’ and ‘60 Minutes’ did a story about it because it is, unfortunately, so common around the country.

What can we do about it? I began to ask leaders in education around the State. The State superintendent: ‘Absolutely, it is one of the biggest problems we have.’ I talked to Paul Hubbard, head of the teachers union in Alabama: ‘Absolutely, it is a big problem.’ ‘I am tired,’ he said in the newspaper recently, ‘of children cursing my teachers in the classroom and nothing being done about it.’

Then we began to talk to teachers, principals, and school board superintendents. They talked about the lawyers and the complicated regulations with which they deal. It is really unacceptable. Teachers who have been trained with masters’ degrees in special education to deal with these children have also overwhelmingly told me this is not a healthy thing, that we are telling special children with physical disabilities, or disabilities as defined by the federal law, that they don’t have to adhere to the same standards other children do. Right in the classroom, we create, by federal law, two separate standards for American citizens. You can say to one child: You can’t do this, you are out of school. But we can say to another children: You can do it, and you are only out 10 days, or maybe 45 days, and then you are back in the classroom. That is not defensible.”

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). You have previously argued in favor of such segregation and expressed skepticism of mainstreaming. 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?

RESPONSE: Because this case involves pending litigation in which the Department is a party, it would be unwise for me to comment further. If I am fortunate enough to be confirmed as Attorney General, I will thoroughly review this case in conjunction with the expert and career attorneys in the Department of Justice to make a decision about how best to proceed.

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.”

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.

RESPONSE: It is my understanding that this case remains as pending litigation in which the Department is a party, and for that reason, I cannot comment further. If I am fortunate enough to be confirmed as Attorney General, I will thoroughly review this case in conjunction with the expert and career attorneys in the Department of Justice and make a decision about how best to proceed.

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

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will vigorously defend the laws passed by Congress for which a reasonable defense can be made. That is a vitally important principle and a longstanding tradition of the Department of Justice, which affords appropriate respect to Congress as a co-equal branch of government, and I fully subscribe to it.

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

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

RESPONSE: As you note, the voting rights of Americans with disabilities are protected by federal law, including the ADA and the Voting Rights Act, among others. The Supreme Court held in *Crawford v. Marion County Election Board* that voter identification laws are neither *per se* unconstitutional, nor do they necessarily violate the Voting Rights Act. The analysis of such laws is specific to the particular law, the jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. If I am confirmed as Attorney General, I am committed to enforcing all of the federal laws within the Department’s jurisdiction, including investigating alleged violations of the federal voting rights laws in a fair and even-handed manner.

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 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?

RESPONSE: First, the above question does not provide a full accounting of my statement, so I will complete it for the record. Over 30 years ago, I said that the VRA “is an intrusive piece of legislation, but I do not believe—and I have seen, and I am absolutely certain of this, that racial progress could not have been made in the South without the power of the federal courts and the federal Government.” When I testified before the Committee, I added that “[t]he Voting Rights Act passed in 1965 was one of the most important Acts to deal with racial difficulties that we face. And it changed the whole course of history, particularly in the South.” Second, and to your direct question, the Supreme Court has concluded that Section 2 is constitutional, and if I am so fortunate as to be confirmed, I will enforce this important section and others.

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?

RESPONSE: Because this case involves pending litigation in which the Department is a party, it would be unwise for me to comment further. If I am fortunate enough to be confirmed as Attorney General, I will thoroughly review this case in conjunction with the expert and career attorneys in the Department of Justice to make a decision about how best to proceed.

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?

RESPONSE: I have not reviewed the report, but I have no reason not to accept the intelligence community's conclusion(s) as contained in the report.

b. Do you accept the conclusion of the intelligence community that Russia provided to Wikileaks the information that it stole?

RESPONSE: I have not reviewed the report, but I have no reason not to accept the intelligence community's conclusion(s) as contained in the report.

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?

RESPONSE: I have not reviewed the report, but I have no reason not to accept the intelligence community's conclusion(s) as contained in the report.

d. Do you consider this to be illegal behavior, and a threat to our democratic process?

RESPONSE: I have not reviewed the matter in any detail; therefore, I am not in a position to opine on it.

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?

RESPONSE: No.

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?

RESPONSE: I am unaware of any investigations beyond what is contained in public reporting. As such, I am unable to comment on the status of any such investigations except to say that I believe all investigations by the Department of Justice must be initiated and conducted in a fair, professional, and impartial manner, without regard to politics or outside influence. The Department must follow the facts wherever they lead, and make decisions regarding any potential charges based upon the facts and the law, and consistent with established procedures of the Department. That is what I always did as a United States Attorney, and it is what I will insist upon if I am confirmed as Attorney General.

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?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will faithfully enforce the law equally to all persons and defend the Constitution of the United States. Our laws, including our drug laws, should be enforced as written, with no special or harsher treatment given to anyone on account of their race. That is how I would direct the Department of Justice to proceed. I would note that as a Senator, I offered legislation to reduce mandatory sentences in 2001 for crack cocaine and my legislation was opposed by the Bush Administration.

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?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will carefully evaluate any current practices or policies in place by the Department and the effectiveness of those practices to aid in the administration of justice.

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?

RESPONSE: First, much of the language and the entire statement of facts in the county judge's order were adopted from Tieceo's motion to dismiss. Second, the Alabama Ethics Commission addressed the sharing of investigatory materials with the alleged victims of Tieceo's conduct and unanimously exonerated me. Third, the Alabama State Bar received the criminal court's order and a bar complaint filed against me by one of Tieceo's lawyers. After reviewing over 20 ethics charges, the State Bar took no action on the complaint. Fourth, the Eleventh Circuit reviewed the county judge's order that had been used to support Tieceo's counterclaims for a violation of its constitutional rights and malicious prosecution in a civil case between U.S. Steel and Tieceo. The Eleventh Circuit concluded that the criminal court's order was "particularly unreliable and misleading," and that the statement of facts was "self serving," as it was drafted by Tieceo's defense counsel. Without the misleading order, the Eleventh Circuit concluded there was "no evidence" that Tieceo's constitutional rights were violated and that there was probable cause to support an indictment as a matter of law; thus, Tieceo's malicious prosecution claim failed.

After the Attorney General's office dismissed many of the counts of the indictment, the county judge dismissed the remaining counts. It is unclear why my successor decided not to appeal that judge's adoption of Tieceo's motion to dismiss, as I am not aware of any statement or press release made about the decision not to appeal. As for whether my office mishandled the case, the decisions of the Ethics Commission, the State Bar, and the Eleventh Circuit in reviewing the conduct underlying the county judge's order speak for themselves.

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?

RESPONSE: The sentence referenced in the above question is taken from Tieceo's motion to dismiss, which the state judge made a part of his order, and which the Eleventh Circuit characterized as self-serving, misleading, and unreliable. If I could go back in time and re-do the litigation, I may have realized more quickly that the multi-pronged attack on my office by Tieceo might have been partially related to my first run for the Senate. *See* "Democrats Level Guns at Sessions as Senatorial Rhetoric Picks Up," *The Birmingham News*, 4C, April 2, 1996 ("The Democratic Senatorial Campaign Committee is focusing on Sessions because he appears to be the front runner, said committee spokeswoman Kate Jeffrey in Washington. . . . The Democratic committee has touted an ethics complaint filed against Sessions, alleging he has allegedly gave records seized from the Birmingham-based Tieceo Inc. to that company's

competitor, USX Corp.”).

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?

RESPONSE: It is my understanding that the Department currently provides guidance and training opportunities to its attorneys that are aimed at preventing misconduct. If I am fortunate enough to be confirmed as Attorney General, I will carefully evaluate this training and guidance and the effectiveness of it in guarding against prosecutorial misconduct. I will likewise assess the strength of the Department’s current procedures for managing complaints of misconduct and handling disciplinary decisions.

I believe it must be the highest priority of the head of a large office to provide strong leadership to ensure problems do not arise in cases and to devise mechanisms to deal with them when they arise. I have had a long career in personally prosecuting complex cases and supervising cases of all kinds. I am very proud of the professionalism and integrity of that work.

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?

RESPONSE: I have had no involvement in or briefings on this matter, as the events unfolded at the state level without input from my office; therefore, I have no opinion as to the appropriateness of what took place.

b. If confirmed, what actions would you take if any official refuses to issue a marriage license to a same-sex couple?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will enforce the law and adhere to Supreme Court precedent. Without having the facts of a specific case before me, it would be difficult to comment on any actions that I might take in order to carry out this duty.

c. When is it appropriate for a judge or other public official to disregard a Supreme Court decision?

RESPONSE: It is never 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?

RESPONSE: The Freedom of Information Act (FOIA) is an important law that has played an integral role in providing the public with the tools necessary to oversee their government. If confirmed, I will ensure that the Department and the Executive Branch appropriately comply with FOIA, as well as work with you and this Committee to make sure that the letter and the spirit of FOIA is carried out.

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?

RESPONSE: Individuals are certainly justified in wanting to ensure that law enforcement is focused on enforcing the law and that corruption is not incentivized. My understanding is that the changes announced by Attorney General Holder at the beginning of 2015, that greatly curtailed the adoption program, were in direct response to these kinds of concerns. If I am confirmed, I will review the Department of Justice’s policies to ensure that these changes have adequately addressed any such issues and have not created new issues or complications. The seizure of the proceeds of illegal activity, especially drugs, is an effective way to deter drug dealing, but must be done according to law.

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.

RESPONSE: Most of us who grew up in Alabama during the struggle for civil rights can truthfully say that we had a number of up-close experiences with the movement. I saw and experienced segregation as well as a number of other forms of arbitrary discrimination against African-Americans. In later years, as a federal prosecutor, I had a very up-close experience with the KKK as I oversaw the investigation and prosecution of a Klansman who murdered a young African-American teenager. I experienced the segregated public school system and how separate was absolutely not equal. I have observed employment discrimination. I have seen systematic and sustained actions of white officials to deny voting rights to African-Americans. I am deeply aware of this blatant discrimination and have learned more as civil rights cases were filed to attack these discriminatory actions. The “white power” establishment worked, with only a few exceptions, to resist changes that law, morality, and decency demanded. I saw the resistance, often fierce, and my experience has caused me to more fully understand it than would someone who did not live amongst it. I can see clearly the power of Dr. Martin Luther King, Jr.’s moral leadership and how that peaceful, courageous and relentless campaign achieved historic results and laid the foundation for reconciliation, integration and progress. As an adult, I have shared in many conversations with African-American friends and colleagues who lived through the very real oppression that existed. These unique experiences with the Civil Rights Movement have provided me with insight into the challenges we have overcome and the ones we still face. I probably would not have this same appreciation had I grown up in another part of the country.

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?

RESPONSE: Where inequality is found in the enforcement of laws, the Department of Justice and the Civil Rights Division certainly have a clear role to play in remedying disparities. Inequalities that persist outside of the enforcement of laws and their inherent protections, perhaps stemming from bias or divisive rhetoric, present a more difficult question that the citizens of this country must continue to work to correct. By engaging with state and local law enforcement and communities around the country, the Department of Justice undoubtedly has opportunities to contribute to improved race relations. Good law enforcement is essential for the safety of our minority communities but we must work constantly to ensure those communities are part of the solution and see it as fair.

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?”

RESPONSE: Congressman Lewis was a key figure in the civil rights movement and has my utmost respect. Though I am disappointed to learn of his concerns about my nomination, if confirmed, I hope that he will be willing to work with me in the Department’s ongoing efforts to protect the civil rights of all Americans. I was proud to co-sponsor with Senator Booker the Congressional Gold Medal for the Selma to Montgomery marchers and to be with Congressman Lewis on that bridge where that historic event occurred 50 years before.

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.”

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

RESPONSE: I did not hear the interview and will not speculate on what Congressman Brooks meant in his statement. I do have concerns about the growing frequency with which those who disagree with a number of conservative policies use that as a basis to loosely accuse conservatives of bigotry and racial animus. I would not label these tactics as a “war on whites,” however.

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?

RESPONSE: I am not aware of facts that would support the assertions made in the above question and am unable to opine on this matter.

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.

Will you commit to keeping that policy in place?

RESPONSE: While I am generally familiar with this policy, I am not privy to any internal Department of Justice data regarding the effectiveness of the policy in balancing the interests of law enforcement and public safety with protection of civil liberties. If I am fortunate enough to be confirmed as Attorney General, I will carefully review and evaluate this policy, including any relevant data and how circumstances may have changed or how they may change in the future and will be prepared to listen to members of Congress and their concerns.

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?

RESPONSE: I know that several members of this Committee have particular concern about ensuring competition in the agricultural sector of our economy. If I am confirmed as Attorney General, the Antitrust Division will conduct a thorough evaluation, consistent with federal law, of proposed mergers and acquisitions to determine whether they violate federal antitrust law and policies. I look forward to working with you and this Committee to learn more about these particular issues and to ensure that the Department has the information and tools it needs to carry out its duties in antitrust enforcement, particularly in this vitally important sector of our economy.

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?

RESPONSE: As I testified before the Committee, I have no hesitation to enforce antitrust law to protect against anti-competitive transactions and behavior. If I am confirmed as Attorney General, the Antitrust Division will look at all markets to ensure compliance with federal antitrust law.

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?

RESPONSE: I cannot at this time comment or commit specifically on any ongoing investigations by the Department, but if I am confirmed as Attorney General, the Antitrust Division will conduct a thorough evaluation, consistent with federal law, of proposed mergers and acquisitions to determine whether they violate federal antitrust law and policies. The agricultural sector of our Nation's economy is of vital importance, and I look forward to working with you and this Committee to learn more about these particular issues and to ensure that the Department has the information and tools it needs to carry out its duties in antitrust enforcement.

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?

RESPONSE: I understand that the Department of Justice is currently reviewing a number of mergers in the agricultural sector of our economy, and I understand your concerns about the cumulative impacts of these transactions. While I cannot at this time comment or commit specifically on any ongoing investigations, if I am confirmed as Attorney General, the Antitrust Division will conduct a thorough evaluation, consistent with federal law, of proposed mergers and acquisitions to determine whether they violate federal antitrust law and policies.

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?

RESPONSE: I cannot at this time comment or commit specifically on any matter currently being reviewed by the Department, but if I am confirmed as Attorney General, the Antitrust Division will conduct a thorough evaluation, consistent with federal law, of proposed mergers and acquisitions to determine whether they violate federal antitrust law and policies.

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?

RESPONSE: I am not aware of a basis to recuse myself from such matters. If a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed. As I made clear at my confirmation hearing, I will always be fair and work within the law and the established procedures of the Department.

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?

RESPONSE: If I am confirmed as Attorney General, I will take whatever steps are necessary to ensure that the Department of Justice represents the interests of the American people in the impartial enforcement of the law, including its review of mergers and acquisitions. At this point, and without the resources of the Department of Justice at my disposal, it would be premature to announce specific steps to mitigate a hypothetical conflict of interest.

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.”

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

RESPONSE: While I am not familiar with the Department’s specific procedures for the review of proposed mergers, if I am fortunate enough to be confirmed as Attorney General, I will have no hesitation to enforce antitrust law. I will ensure that proper safeguards are in place and, assuming they are already in place, that they are followed to the letter to guard against political influence in these decisions.

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.” 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, 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?

RESPONSE: There are significant differences between the issue discussed in the op-ed

referenced above and the broad hypothetical presented regarding an investigation into the President. Secretary Clinton was under investigation at the time Attorney General Lynch met with President Clinton. If merely being a supporter of the President's during the campaign warranted recusal from involvement in any matter involving him, then most typical presidential appointees would be unable to conduct their duties. I am not aware of a basis to recuse myself from such matters. If a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed. As I made clear at my confirmation hearing, I will always be fair and work within the law and the established procedures of the Department.

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?

RESPONSE: I am not aware of a basis to recuse myself from such matters. If a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed. As I made clear at my confirmation hearing, I will always be fair and work within the law and the established procedures of the Department.

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 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?

RESPONSE: With respect to both, my concerns with the legislation were fiscally-related and shared by several of our colleagues on the Judiciary Committee. Since that time, the bills were passed and signed into law by the President. If I am fortunate enough to be confirmed as Attorney General, I will seek to ensure that these programs are properly administered and implemented by the Department in a manner that achieves the stated objective of the law.

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?

RESPONSE: As I testified before the Committee, I will not commit to never enforcing Federal law. Whether an arrest and investigation of an individual who may be violating the law is appropriate is a determination made in individual cases based on the sometimes unique circumstances surrounding those cases, as well as the resources available at the time.

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*, 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?

RESPONSE: The Ninth Circuit case you referenced is relatively recent, and I am not familiar with how other courts may have interpreted the relevant appropriations language or the Ninth Circuit’s opinion. As an emerging issue, that is one that will need to be closely evaluated in light of all relevant law and facts. I am fortunate enough to be confirmed as Attorney General, I will conduct such a review. Of course, medical marijuana use is a small part of the growing commercial marijuana industry.

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.”

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?

RESPONSE: The United States is a signatory to the VCCR, and the amendment is helpful in

ensuring that foreign nationals are informed that they may ask for consular notification. The Committee Notes on that particular amendment recognize that certain questions remain unresolved by the courts concerning Article 36. If I am fortunate enough to be confirmed as Attorney General, I will review those unresolved questions and determine whether additional changes or steps are necessary.

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* 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?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I would be glad to work with Congress to ensure that the United States meets its international legal obligations and protects the interests of U.S. citizens.

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?

RESPONSE: Encryption serves many valuable and important purposes. It is also critical, however, that national security and criminal investigators be able to overcome encryption, under lawful authority, when necessary to the furtherance of national-security and criminal investigations.