

**Nomination of Brett Allen Shumate  
To be Assistant Attorney General for the Civil Division  
Questions for the Record  
Submitted April 2, 2025**

**QUESTIONS FROM SENATOR DURBIN  
Ranking Member, Senate Judiciary Committee**

1. Last year, you participated in a Federalist Society panel discussion about the President's ability to remove the heads of independent agencies. During that discussion, you argued that "nearly all modern, independent agencies are unconstitutional" because of protections dictating that agency heads can only be removed for cause.

This view directly contradicts the Supreme Court's decision in *Humphrey's Executor*, which held that removal protections for independent agency heads are constitutional. As I noted at your hearing, the Trump Administration has informed me that it will seek to have this precedent overturned. *Humphrey's Executor*, however, remains the law of the land.

Since his inauguration, President Trump has fired Democratic members of the Equal Employment Opportunity Commission, National Labor Relations Board, Federal Election Commission, and Federal Trade Commission, among others.

- a. **Were these firings lawful under binding Supreme Court precedent?  
Please answer "yes" or "no."**

**Response:** As I explained at the hearing, I appeared at this event on behalf of the law firm I worked for at the time that had a pending case on the topic of Presidential removal power. In that case, I represented our client's position that a certain agency's removal protections were unconstitutional. Because challenges to the removal of government officials are the subject of pending litigation, I respectfully decline to comment at this time on the President's removal of the government officials listed in your question.

- b. **In your view, could President Trump lawfully remove members of the Federal Reserve without cause?**

**Response:** Because challenges to the removal of government officials are the subject of pending litigation, I respectfully decline to comment at this time on the President's hypothetical removal of other government officials.

2. When I asked at your hearing whether you have participated in discussions with Justice Department or White House officials about the plan to overturn *Humphrey's Executor*, you declined to answer. You stated that it would not be "appropriate to disclose what matters [you] advised on at the Department."

Both Republican and Democratic members of the Senate Judiciary Committee have previously taken the position that nominees before the Committee can and should answer questions about topics they have worked on while serving in a presidential administration. For example, a previous Republican Chairman stated that it was not an “unfair question” to ask then-Second Circuit nominee Steven Menashi whether he advised on specific topics while serving in the Trump White House Counsel’s Office.

**Given this context, please confirm whether you have participated in discussions with Justice Department or White House officials about the plan to overturn *Humphrey’s Executor*.**

**Response:** Given the Civil Division’s responsibility to provide confidential legal advice to officials throughout the government, it would be inappropriate for me to discuss whether I have had internal deliberative conversations within the Justice Department or with White House officials about any particular matter.

3. I have long been concerned by the high levels of youth e-cigarette use. The Tobacco Control Act dictates that manufacturers first have to prove that an e-cigarette is “appropriate for the protection of public health”—that is, manufacturers must meet this burden and receive Food and Drug Administration (FDA) approval—before the product can enter the market.

However, in recent years, the tobacco industry has flooded the market with flavored vaping devices designed for children that never received FDA approval. In my view, it is a failure of the FDA and the Civil Division that our laws, which were designed to protect children from nicotine addiction, have not been enforced.

**Will you commit, if you are confirmed, to prioritizing enforcement of the Tobacco Control Act against these e-cigarette manufacturers?**

**Response:** If I am confirmed, I will review the applicable ethics regulations and consult with the Civil Division’s Designated Ethics Officer to determine whether it would be appropriate for me to participate in any matters involving e-cigarette manufacturers.

4. During your hearing, I asked you about President Trump’s recent comments in support of providing January 6 offenders with financial reparations in the form of a compensation fund. He stated, in reference to January 6 defendants, that “a lot of the people that are in the government now talk about [financial reparations] because a lot of the people in government really like that group of people.” You responded that you were unfamiliar with these comments.
  - a. Now that you have had time to familiarize yourself with President Trump’s comments, do you agree with him that January 6 insurrectionists, including those who violently assaulted law enforcement officers, deserve financial reparations?

**Response:** Because financial compensation for injuries caused by federal government employees in connection with their official duties should be determined by a court consistent with the facts and the law of each case, I respectfully decline to comment at this time on any hypothetical litigation against the federal government.

- b. Have you participated in discussions with any Justice Department or White House officials about the possibility of providing January 6 defendants with financial reparations or setting up a compensation fund?

**Response:** Given the Civil Division's responsibility to provide confidential legal advice to officials throughout the government, it would be inappropriate for me to discuss whether I have had internal deliberative conversations within the Justice Department or with White House officials about any particular matter.

- c. Are you among the government officials who "really like" January 6 offenders?

**Response:** Please see my responses to Questions 4a and 4b.

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**QUESTIONS FROM SENATOR WHITEHOUSE**

**Please answer each question and sub-question individually and as specifically as possible.  
Where indicated, please provide only yes or no answers.**

1. In our meeting, you said it was important for DOJ to provide independent, objective advice.
  - a. Did DOJ provide independent, objective advice before President Trump issued the Executive Order on birthright citizenship?

**Response:** Given the Civil Division's responsibility to provide confidential legal advice to officials throughout the government, it would be inappropriate for me to discuss whether or not I have had internal deliberative conversations within the Justice Department or with White House officials about any particular matter.

- b. Did you provide any advice related to the birthright citizenship Executive Order?

**Response:** Please see my response to Question 1a.

2. If confirmed, how will you maintain your independence from the president? Under what circumstances should the Department maintain its independence from the president?

**Response:** If confirmed, I will uphold my oath to support and defend the Constitution, and act in accordance with applicable laws, regulations, and Department policies.

3. If confirmed, what will you do if representing the interests of the United States conflicts with the political or personal or financial interests of the president?

**Response:** Please see my answer to Question 2.

4. Your Senate Judiciary Questionnaire says that in 2019 you joined the Teneo Network.

- a. In your own words, what is the Teneo Network?

**Response:** Teneo is a network of like-minded conservatives.

- b. How did you first hear about the Teneo Network?

**Response:** I was invited to join Teneo in 2019.

- c. Why did you choose to join the Teneo Network?

**Response:** I joined Teneo in 2019 to network with other like-minded conservatives.

- d. What activities have you participated in as part of the Teneo Network?

**Response:** Since 2019, I have attended approximately two to three Teneo events each year, including Christmas parties and other social events, the 2021 retreat, the 2023 father-son retreat, and the 2024 legal summit.

- e. Who funds the Teneo Network? Have you fundraised for it?

**Response:** I have donated to Teneo, but I have not fundraised for Teneo.

5. If you are confirmed, what would you do if the Attorney General or President directs you to take a position for improper reasons?

**Response:** The question poses a hypothetical, which I do not believe would occur. If confirmed, I will follow the law and uphold my oath to support and defend the Constitution.

6. Do you believe that judges who issue orders that are unfavorable to the Trump administration should be impeached?

**Response:** In general, the Department of Justice responds to an unfavorable decision by filing an appeal.

7. Do you believe a federal judge issuing a temporary restraining order against the executive branch is tantamount to a coup?

**Response:** In general, courts have authority to issue temporary restraining orders in appropriate cases.

8. Do you believe it is appropriate to refer to judges who rule against President Trump as “political terrorists”?

**Response:** I am not familiar with the statement quoted in this question but, generally speaking, I support the right of all individuals to free speech.

9. Did Joe Biden win the 2020 presidential election?

**Response:** Former President Joseph Biden was certified as the winner of the 2020 presidential election and sworn in as the forty-sixth President on January 20, 2021.

10. Was the U.S. Capitol attacked by a violent mob on January 6, 2021?

**Response:** I unequivocally condemn all violence that took place on January 6, 2021.

11. Does the 22nd Amendment permit a president to be elected more than twice?

**Response:** In my career as a lawyer, I have not had occasion to study this issue in depth.

**Senate Judiciary Committee**  
**Questions for the Record**  
**on the Nomination of Brett Shumate**  
**to be Assistant Attorney General for the Civil Division**  
**April 1, 2025**  
**Senator Amy Klobuchar**

1. In 2022, Congress passed legislation that I led to end Big Pharma’s sweetheart deal and empower Medicare to negotiate lower drug prices for seniors. As a result, Americans are expected to save \$1.5 billion in out-of-pocket costs in 2026 alone. Big Pharma has taken to the courts to dismantle this law.

- I was pleased to see the government file a brief in the Third Circuit in defense of the law. Will you commit to continuing to defend the law that allows Medicare to negotiate prescription drug prices?

**Response:** I am recused from the litigation involving the Inflation Reduction Act’s Drug Negotiation Program.

2. During the last Trump Administration, you chose not to defend in court the Affordable Care Act’s coverage of pre-existing conditions.

- Given the Republican Chair of the Health, Education, Labor and Pensions Committee Lamar Alexander called your position “as far-fetched as any I’ve ever heard” and three attorneys withdrew from the case and one even resigned in protest, how could you argue that there was no “reasonable argument” to be made in defense of the law?

**Response:** In *Texas v. United States*, No. 4:18-cv-00167-O (N.D. Tex.), the Department of Justice filed briefs consistent with the Attorney General’s June 7, 2018 letter to Congress. Although the district court agreed with the Department of Justice’s position, the Supreme Court ultimately held in *California v. Texas*, 593 U.S. 659 (2021), that the plaintiffs lacked standing without reaching the merits.

3. The President has illegally fired two Senate confirmed commissioners on the FTC without cause. The Justice Department has made clear it will defend the President’s actions. Last April, you said “nearly all modern, independent agencies are unconstitutional.” But there is a 90 year old Supreme Court precedent directly upholding the constitutionality of the FTC Act (*Humphrey’s Executor v. U.S.* 295 U.S. 602 (1935))

- Regardless of your personal views, or that of the President’s, isn’t it true the Supreme Court has not overturned that decision?

**Response:** *Humphrey’s Executor* has not been overturned, but the Justice Department has notified Congress that the Department intends to urge the Supreme Court to overrule it.

- In *PHH Corp. v. Consumer Fin. Prot. Bureau* (2018), Justice Kavanaugh, while serving on the D.C. Circuit, wrote that multi-member independent agencies are part of a “deeply

rooted tradition” that “has been widely recognized by leading judges, congressional committees, and academics...” Do you agree?

**Response:** Because challenges to the removal of government officials are the subject of pending litigation, I respectfully decline to comment at this time.



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**QUESTIONS FROM SENATOR COONS**

1. If President Trump asked you to do something you judged to be illegal or unethical, would you resign? Please answer yes or no.

**Response:** The question poses a hypothetical, which I do not believe would occur. If confirmed, I will always follow the law, as well as uphold my oath to support and defend the Constitution.

- a. If you would not resign, what would you do?

**Response:** Please see my response to Question 1.

2. How would you respond if your role at the Department of Justice required you to pursue a policy directive that was unconstitutional?

**Response:** Please see my response to Question 1.

3. What is the remedy if the President violates his constitutional duty to faithfully execute the laws?

**Response:** The remedy would depend upon the facts and circumstances. The remedy could be imposed by a court of law, by Congress, or by voters at the ballot box.

4. As a DOJ lawyer, when is it appropriate to refuse to follow a directive from the President?

**Response:** Justice Department lawyers should always uphold their oaths to support and defend the Constitution, and act in accordance with applicable laws, regulations, and Department policies.

5. What are the remedies available to a litigant who is dissatisfied with a court order?

**Response:** Parties who are dissatisfied with a court order have the option to appeal the order to a higher court, up to and including the Supreme Court, and including the option to seek a stay of the court's order pending appeal.

- a. Would you ever advise a client to disregard a court order?

**Response:** I will always advise a client, whether in private practice or in government, to comply with court orders.

- b. If President Trump instructed you to disobey an order from a federal judge, how would you respond?

**Response:** The question poses a hypothetical, which I do not believe would occur. If confirmed, I will always follow the law and uphold my oath to support and defend the Constitution.

- c. If Attorney General Bondi instructed you to disobey an order from a federal judge, how would you respond?

**Response:** Please see my response to Question 5b.

6. When is it appropriate for the DOJ to decide not to defend a federal law?

**Response:** The Attorney General has a duty to defend the validity of Congressional enactments when there are reasonable arguments available to do so. An exception exists in certain cases where there is a conflict between a federal statute and the President's Article II authority. If confirmed, I commit to following these principles.

7. Do you agree that the DOJ has an independent obligation to evaluate the legality of the President's policy proposals?

**Response:** The Department's Office of Legal Counsel (OLC) provides legal advice to the President and all executive branch agencies. The Civil Division works closely with its client agencies to limit the potential for litigation and to prevent unfavorable outcomes should cases proceed in court. If confirmed, I commit to working with the relevant Department personnel, including OLC, to ensure the Department is fulfilling its duties to advise the President and federal agencies on the legality and constitutionality of their policies.

8. What is your understanding of the DOJ's contact policy regarding interactions between the DOJ and White House officials?

**Response:** If confirmed, I will comply with all applicable Justice Manual provisions and other guidance issued by the Attorney General regarding communication with the White House.

9. How would you respond to the President calling on the Department via social media, a press conference, or other means, to investigate, sue, and/or prosecute a political opponent?

**Response:** If confirmed, I will faithfully enforce the laws of the United States based on the facts and circumstances of each case.

10. How would you respond to the President calling on the Department via social media, a press conference, or other means, to investigate, sue, and/or prosecute an individual or corporation where that action was not justified by the facts and the law?

**Response:** Please see my response to Question 9.

11. In a memo to all DOJ employees, Attorney General Pam Bondi, stated that Department attorneys who refuse to advance arguments “deprive[] the President of the benefit of *his* lawyers.” I want you to focus on the part of this statement that references Department attorneys as President Trump’s lawyers.

- a. Do you agree with this characterization of Department attorneys by Attorney General Bondi?

**Response:** The Civil Division represents the United States in litigation, and in lawsuits in which the President is named as a defendant, the Civil Division represents the President in his official capacity.

- b. Do you consider the Assistant Attorney General for the Civil Division to be “the President’s lawyer”?

**Response:** Please see my response to Question 11a.

- c. Who does the DOJ Civil Division work for?

**Response:** The DOJ Civil Division works for the people of the United States, who elected Donald J. Trump as the President of the United States.

12. Does the President have the Constitutional authority to impound funds duly appropriated by Congress?

**Response:** Because some of the President’s decisions with respect to federal funding are the subject of pending litigation, I respectfully decline to comment.

- a. If yes, under what circumstances?

**Response:** Please see my response to Question 12.

- b. Since taking office, President Trump has worked to defund and shutter certain agencies, refusing to spend money duly appropriated by Congress for programs and agencies created by certain acts of Congress. Is this Constitutional?

- i. If yes, please explain.

**Response:** Please see my response to Question 12.

13. On April 2, 2025, the Supreme Court unanimously upheld decisions by the Food and Drug Administration denying access to the market to certain flavored e-cigarettes.

- a. If confirmed, how do you plan to combat the unlawful sale and distribution of e-cigarettes?

**Response:** If I am confirmed, I will review the applicable ethics regulations and consult with the Civil Division's Designated Ethics Officer to determine whether it would be appropriate for me to participate in any matters involving e-cigarette manufacturers.

- b. In June 2024, the DOJ and the FDA announced a multi-agency task force to combat the illegal distribution and sale of e-cigarettes. If confirmed, what, if any, actions will you take with respect to the operation of this task force?

**Response:** Please see my response to Question 13a.

**Senator Mazie K. Hirono**  
**Senate Judiciary Committee**

**Nominations Hearing | March 26, 2025**  
**Questions for the Record for Brett Shumate**

1. During an April 2024 Federalist Society panel, you argued that “*nearly all* modern, independent agencies are unconstitutional.” You argued that *Selia Law* stands for the proposition that even multi-member independent agencies are unconstitutional if they exercise substantial executive power. **In your view, which few independent agencies *are* constitutional?**

**Response:** As I explained at the hearing, I appeared at this event on behalf of the law firm I worked for at the time that had a pending case on the topic of Presidential removal power. In that case, I represented our client’s position that a certain agency’s removal protections were unconstitutional. Because challenges to the removal of government officials are the subject of pending litigation, I respectfully decline to comment at this time.

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**QUESTIONS FROM SENATOR SCHIFF**

1. In April 2024, you stated during a Federalist Society panel discussion that, “nearly all modern, independent agencies are unconstitutional” because of removal protections. Do you stand by that statement?

**Response:** As I explained at the hearing, I appeared at this event on behalf of the law firm I worked for at the time that had a pending case on the topic of Presidential removal power. In that case, I represented our client’s position that a certain agency’s removal protections were unconstitutional. Because challenges to the removal of government officials are the subject of pending litigation, I respectfully decline to comment at this time on the President’s removal of the government officials listed in your question.

2. On February 12, 2025, the Justice Department informed this Committee that it plans to ask the Supreme Court to overturn *Humphrey’s Executor*, the landmark Supreme Court case from 1935 establishing that the President cannot remove the heads of independent federal agencies without cause. Please list below all of the cases that the Justice Department has already asked the Supreme Court to overturn.

**Response:** To my knowledge, *Humphrey’s Executor* is the only Supreme Court case that the Department of Justice, under the current Administration, has notified Congress that the Department intends to urge the Supreme Court to overrule in an appropriate case.

3. Please list below all of the cases that the Justice Department is planning to ask the Supreme Court to overturn.

**Response:** Please see my response to Question 2.

4. Will the Justice Department be asking the Supreme Court to overturn *Brown vs. Board of Education*, 347 U.S. 483 (1954)?

**Response:** Please see my response to Question 2.

5. Will the Justice Department be asking the Supreme Court to overturn *Obergefell v. Hodges*, 576 U.S. 644 (2015)?

**Response:** Please see my response to Question 2.

6. Will the Justice Department be asking the Supreme Court to overturn *Miranda v. Arizona*, 384 U.S. 436 (1966)?

**Response:** Please see my response to Question 2.

7. Will the Justice Department be asking the Supreme Court to overturn *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012)?

**Response:** Please see my response to Question 2.