

Senator Blumenthal

Second Round QFRs for Boggs:

- 1. You have indicated in your testimony before the Committee and in your written responses that on a number of issues your views have or may have evolved. Yet there is no evidence in the record to support this evolution. For each of the following issues, please provide evidence that your views evolved before you were nominated to serve as a federal judge:**

- a. The inclusion of a confederate symbol on the Georgia state flag.**

Response: I believed in 2001 and still believe today that the former Georgia state flag was offensive to many people based on its historical association with the Civil War and the institution of slavery, the connection between the adoption of the flag and the Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), and the flag's more recent usage by organizations that espoused hate and racism and overtly oppressed African-Americans. The vote on the flag occurred over thirteen years ago and during the intervening years no one has ever sought to discuss this vote with me publicly or privately, until my consideration for the district court. My personal opinion regarding the former Georgia state flag has not "evolved" but has remained consistent since at least 2001 when this issue was raised in the legislature. As evidence of my views on this matter, I would point to my sworn testimony before the Senate Judiciary Committee that this was my view in 2001 at the time of the flag vote.

- b. The constitutionality of same-sex marriages.**

Response: I have said that my position may or may not have changed since the vote on the proposed Constitutional amendment in 2004, but that it would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for district judge, to express my personal opinion now on this issue. I believe that my record as a state court judge for ten years demonstrates that I have been fair and impartial without any regard to any personal views or opinions I might have.

- c. The wisdom of the amendment to the Patient Right to Know Act of 2001 that would have required abortion providers to disclose their personal information and how many abortions they had performed.**

Response: Until just prior to my confirmation hearing, I did not recall the vote on this amendment and during the intervening years since that vote, no one sought to discuss it with me publicly or privately. As a result, I had no occasion until the confirmation hearing to reconsider the issue or to express any opinion on it or to express regret that I had voted for it. My opinion, stated under oath at my

confirmation hearing and in response to written questions, is that the amendment was ill-conceived and that I should not have supported it.

- 2. In your response to a question I asked about your donations to Georgia Conservatives in Action, you mention you did not check GCIA's Facebook page before donating \$1000 in April 2012 and \$1500 in September 2012 from your judicial campaign account. Your support for this group raises impartiality concerns; LGBT litigants might question the neutrality of a judge who supported a group that urged Christians to rally behind a pastor who compared homosexuality to "other sinful lifestyles like drug abuse and witchcraft." You have stated that you personally knew the co-founders of Georgia Conservatives in Action and that your donations were personally solicited by these co-founders.**

- a. What materials, if any, did you consult before deciding to contribute to this organization? What information did these sources convey about the work that GCIA did or the candidates they supported? Please provide copies of these materials to the Committee.**

Response: I did not consult any materials of this organization prior to making the two referenced donations. When one of the organization's co-founders asked if I could make two corporate donations to help with the costs associated with two specific events, I verified the organization's tax status with the Internal Revenue Service and the organization's nonprofit status with the Georgia Secretary of State. I also consulted the Georgia Code of Judicial Conduct and the Advisory Opinions therein in determining that the donations were permitted by Georgia law and the Georgia Code of Judicial Conduct.

- b. In their requests for donations, what representations did the co-founders of GCIA make about their positions on issues that might come before the judiciary?**

Response: They made no such representations.

- c. In response to a question I asked about your financial support of GCIA, you stated that your contributions were provided solely for the purpose of helping with the costs of two events. One of these events was the Economic Development Summit. You do not name the other event. Please name and describe the second event that you financially supported through your donation to GCIA. In your description, please include what the purpose of the event was and whether the event was designed to benefit any candidate or candidates for office, and which candidate or candidates.**

Response: I did not recall the details of this second event, which I did not attend, so to respond to this question I inquired with the organization. I have been told that it was a nonpartisan rally to encourage people to get involved in their community, focusing on legislative proposals to reform Georgia's ethics laws, and

also centered on Governor Nathan Deal's efforts to expand Georgia's DUI and Drug Court programs. I understand that a young man spoke on becoming more civically involved, a representative of Common Cause Georgia, Georgia State Senator Josh McKoon, and Georgia Attorney General Sam Olens spoke on pending ethics legislation reform proposals, and a veteran spoke about his service to our country. Event organizers estimate that approximately 100 people attended, both Democrats and Republicans. I have been informed that this event was expressly not designed to benefit any candidate. No campaign stump-speeches were permitted by any elected officials or candidates for public office, it was not a fundraiser for any candidate nor for the organization, and no tickets were sold.

- d. You stated that prior to donating to GCIA, you checked their tax status to ensure that GCIA was a non-profit organization that you were allowed to donate to under the Code of Judicial Ethics. Did you take any steps beyond checking their tax status?**

Response: In exercising due diligence prior to my former campaign committee's donations, I reviewed the pertinent section of the Georgia Code of Judicial Conduct defining "political organization" and reviewed Georgia statutory authority regarding the disposition of campaign contributions, paying particular attention to O.C.G.A. Section 21-5-33 (b)(1)(a), which expressly permitted contributions to a nonprofit organization. I also spoke personally with the representative of the organization who solicited the contributions and verified that the organization was duly incorporated as a nonprofit organization and confirmed their tax status with the Internal Revenue Service as a 501(c)(4) "social welfare" organization, as evidenced by my notation of "501 C 4 Donation" on the April 6, 2012 check, and my notation of "nonprofit contribution per: O.C.G.A. Section 21-5-33 (b)(1)(a)" on the September 27, 2012 check.

- 3. Question 12a of the Committee questionnaire calls for you to provide any "published material you have written or edited." The Atlanta Journal Constitution has reported on a campaign flyer that conveys your views on hot button issues likely to be considered by the judiciary and that was not included in the materials you submitted to the Committee.**

- a. Why wasn't this flyer provided to the Committee?**

Response: Question 12a of the Senate Judiciary Questionnaire for Judicial Nominees requested the following: "[l]ist the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee." In completing my Senate Judiciary Questionnaire for Judicial Nominees and in providing additional information to the Committee on April 10, 2014, I reviewed the questionnaires of many previous judicial nominees, including several with

prior service in elective office, and none had identified or provided copies of published campaign flyers in response to this or any other question.

Specifically, I reviewed the responses to this question from M. Douglas Harpool who served as a Missouri State Representative and who previously ran for Congress and for the Missouri State Senate who listed only letters to the editor, a chapter of a book, a journal article and law review articles; Gregory Alan Phillips who served in the Wyoming State Senate who listed only three letters to the editor and one law review article; Edward G. Smith who served as an elected county judge and who previously ran for Congress and county judge who listed “None” in response to this question; and Ronnie L. White, who served as a Missouri State Representative and who listed only two YouTube campaign videos published on the Internet, a personal services website and a newspaper column. In addition, I reviewed the follow-up Questions for the Record submitted to dozens of nominees, including those listed, and none were asked any questions concerning written published campaign materials or flyers. Based on the foregoing, I did not provide any flyer to the Committee.

- b. Are there other materials—written either by you or by staff for any of your campaigns—that convey your views on issues that could come before the federal judiciary but have not yet been submitted to the Committee?**

Response: Yes.

- c. If such materials exist, please provide copies to the Committee and indicate why they have been withheld.**

Response: Attached are all campaign materials that I possess or have recently obtained from my past campaigns. They were not provided to the Committee for the reasons explained above in my response to question 3a.

- d. Are you aware of any materials created by groups not associated with your campaigns that speak to your view on issues that might come before the federal judiciary? Please provide all materials that you are aware of that discuss your campaign or your views on issues that might come before the federal judiciary.**

Response: I am not aware of any such materials but it is possible that I was asked to fill out a questionnaire by various organizations during my campaigns and that I did fill them out but I have no recollection of which groups requested those questionnaires from me.

- 4. In response to a written question from Senator Feinstein, you stated that you supported creating a “Choose Life” license plate because there would be an organization within your district who could apply to be a beneficiary of the money that would be raised from the sale of these license plates.**

- a. Could you provide the name of this organization and describe the work they did for the people of your district?**

Response: The name of the organization is Birthright of Waycross, Inc. In 2003, when these bills were introduced, this nonprofit organization provided free and confidential crisis pregnancy services to help women who were or who believed that they were pregnant. This included counseling services to encourage the mother to have the child and/or consider adoption and financial assistance to help with living expenses. They also provided free birth certificates, maternity/baby clothing, free pregnancy tests, and the “proof of pregnancy” form necessary for the mother to qualify for state Medicaid services. Upon passage of H.B. 1053 in 2006, and upon subsequent ratification of a constitutional amendment by the voters, the “Choose Life Adoption Support Program” became law in Georgia in 2007. Since that time, and to my recent understanding, this organization applied for and received funding under the program.

- b. How did you learn of this organization and the benefits it would gain from this legislation? What discussions did you have with this organization relating to this legislation?**

Response: I knew this organization existed and would benefit from this legislation by being generally familiar with its services in Waycross, which is a small town. In addition, I have known the volunteer director of this organization for over twenty years and served with her on the Board of Directors of the YMCA of Waycross, so I may have learned of the services that this organization provided from conversations with her. However, to my recollection, I never discussed this legislation with any member of this organization in 2003.

- 5. As part of your written response to this committee, you had submitted an appellate decision where you were one of the three judges on the panel. This decision upheld a juvenile court’s decision that a minor, despite already being a parent, was not mature enough to make the decision to have an abortion without parental consent. In responding to a question regarding this decision, you stated that your role as an appellate judge was severely constrained by the “any evidence” rule, which requires that a trial court decision supported by any evidence must be upheld.**

- a. I would imagine that as an appellate judge you frequently heard cases in which you were expected to use the “any evidence” standard in evaluating a lower court judgment. In those cases, what percentage of the time did you overturn the lower court’s decision?**

Response: A search of published opinions on LEXIS shows 122 cases in which I was a member of the panel, in which the court applied the “any evidence” or “clearly erroneous” standard of review. Of these cases, 116 were affirmances and 6 were reversals. I was the author of 30 opinions, with 29 affirmances and 1

reversal: *Talifero v. State*, 319 Ga. App. 65 (734 SE2d 61) (2012) (the record contained no evidence of similarity in purported similar transaction). I concurred without a separate opinion in 92 cases.

A search of unpublished opinions shows 107 cases (including the case to which this question refers) in which I was a member of the panel and the court applied the “any evidence” or “clearly erroneous” standard of review. In all 107 of these cases we affirmed the trial court. In total, I was a member of a panel in which the Court of Appeals of Georgia affirmed the trial court under this standard 97% of the time (223 times in 229 cases).

- 6. You have stated that you have attended campaign events as recently as 2012. In response to a question from Senator Leahy, you stated that “[a]s expressly permitted by the Georgia Code of Judicial Conduct, I have periodically attended various partisan and nonpartisan candidate fundraisers throughout my ten-year judicial career. I have not done this regularly. Since I was nominated to be a federal judge, I have attended one fundraiser for a candidate running in a nonpartisan election for Superior Court Judge in Atlanta. “**

a. Please provide a complete list of the candidates that you have

i. Donated money to.

Response: Based upon my best recollection and upon a public search of records maintained by the Georgia Government Transparency and Campaign Finance Commission, the Georgia Secretary of State (with searchable records extending back to 1998) and the Federal Election Commission, I have made campaign contributions to the following Federal and State Democratic, Republican, and nonpartisan candidates from 1998 to the present:

1. Georgia Court of Appeals Judge Lisa Branch (2014)
2. Congressman Austin Scott (2012)
3. State Representative Chad Nimmer (2012)
4. State Representative Chuck Sims (2012)
5. State Representative C. Ellis Black (2012)
6. Superior Court Judge Todd Markle (2011 and 2012)
7. Senator Johnny Isakson (2011)
8. Senator Saxby Chambliss (2008)
9. Barry Fleming for Congress (2008)
10. State Representative Mark Williams (2007)
11. State Representative R.M. Channell (2006)
12. Superior Court Judge Mike Boggs (in-kind) (2004/2005)
13. Howard Mead for Court of Appeals (2004)
14. Roy Barnes for Governor (2002)
15. Richard McGee for Commissioner of Labor (2002)
16. Barbara Christmas for State School Superintendent (2002)

ii. Attended campaign events for.

Response: I do not have a calendar or other means of determining what campaign events I may have attended in my lifetime. I have done my best to recall the events that I did attend, and I have called several people to verify this information. However, despite my best efforts, I am certain that this list is not inclusive of every campaign event that I have ever attended. That said, to the best of my recollection, I have attended campaign events for the following Democratic, Republican, and nonpartisan candidates:

1. U.S. Senator Saxby Chambliss
2. U.S. Senator Johnny Isakson
3. U.S. Representative Jack Kingston
4. Governor Nathan Deal
5. Governor Sonny Perdue
6. Governor Roy Barnes
7. Lt. Gov. Mark Taylor
8. State Senator Van Street
9. State Senator Tyler Harper
10. State Representative Chad Nimmer
11. State Representative Chuck Sims
12. State Representative R.M. Channell
13. State Representative candidate Mark Hatfield
14. Superior Court Judge Steve Jackson
15. Superior Court Judge Dwayne Gillis
16. Superior Court Judge Todd Markle
17. Superior Court Judge candidate Sam Edgar
18. Superior Court Judge candidate Shondeana Crews-Morris
19. Sheriff Randy Royal
20. Sheriff Ronnie McQuaig
21. Sheriff Robert Thomas
22. Sheriff candidate Mike O'Steen
23. Barbara Christmas for State School Superintendent

b. For each candidate listed above, to the best of your knowledge, please describe the positions that each candidate took on the following issues

i. A women's right to choose

Response: I have never had a litmus test or list of questions I posed to candidates to whom I made campaign contributions or whose campaign events I attended. While I suspect that the candidates that I have supported have varied opinions on a woman's right to choose, I personally have never questioned any candidate whom I supported regarding their position on this issue, and consequently, I do not know the position that these

candidates took on this issue at the time I made a contribution to them or attended their campaign event.

ii. LGBT marriage

Response: I have never had a litmus test or list of questions I posed to candidates to whom I made campaign contributions or whose campaign events I attended. However, several of the candidates that I have contributed to, or whose campaign events I attended, served as Governor or legislators during the time I served in the Georgia General Assembly and the 2004 proposed constitutional amendment banning same-sex marriages was considered. I would therefore have been aware of their position or of how they voted on this issue at the time I contributed to them or attended their campaign event. For example, I would have been aware that Governor Sonny Perdue, Representative Austin Scott, Representative R. M. Channell, Representative C. Ellis Black, and Representative Chuck Sims had supported the amendment. While I suspect that the candidates that I have supported have varied opinions on the issue of same-sex marriage, I personally have never questioned any candidate whom I supported regarding their position on this issue, and consequently, I do not personally know the positions that the remaining candidates took on this issue at the time I made a contribution to them or attended their campaign event.

iii. The inclusion of a confederate symbol on the Georgia state flag.

Response: I have never had a litmus test or list of questions I posed to candidates to whom I made campaign contributions or whose campaign events I attended. However, several of the candidates that I have contributed to, or whose campaign events I attended, served as Governor, Lt. Governor, or legislators during the time I served in the Georgia General Assembly and at the time of the 2001 flag vote. I would therefore have been aware of their position or of how they voted on this issue at the time I made a contribution to them or attended their campaign event. For example, I would have been aware that Governor Roy Barnes, Lt. Governor Mark Taylor, Senator Van Street, and Representative R. M. Channell supported changing the state flag in 2001, while Representative Chuck Sims and Representative C. Ellis Black voted against the bill. I would have also been aware that State Representative candidate Mark Hatfield would have been opposed to changing the state flag based on his stated campaign position and literature. While I suspect that the candidates that I have chosen to support have varied opinions on the inclusion of a confederate symbol on the Georgia state flag, I personally have never questioned any candidate whom I supported regarding their position on this issue, and consequently, I do not personally know the position these

candidates took on this issue at the time I made a contribution to them or attended their campaign event.