

QUESTIONS FOR THE RECORD
NOEL J. FRANCISCO
NOMINEE TO BE SOLICITOR GENERAL

SENATOR AMY KLOBUCHAR

1. The Solicitor General occupies a unique role in American government. Some have called the Solicitor General the “tenth Justice.” That is because the job does not just involve advocating for the government like any lawyer would for their client; it also means deciding when the government will appeal cases to the Supreme Court.

- a. When making these decisions, to whom does the Solicitor General answer?

RESPONSE: The Solicitor General owes responsibilities to all three branches of government. He or she is, of course, an attorney for the President and Executive Branch, and in that respect, has ethical responsibilities to both. But the Solicitor General also defends the laws of Congress whenever they can reasonably be defended, save that narrow category of cases that encroach on the President’s Article II powers. And the Solicitor General also owes a special duty of independence and candor to the courts. I believe that all of these aspects of the Solicitor General’s job are vital to the proper functioning of the office.

- b. Do you think your political beliefs would, or should, influence decisions regarding whether to appeal certain cases?

RESPONSE: No, I think that decisions on whether to appeal certain cases should be based on the long-term interests of the United States, not on my own personal political beliefs.

- c. What would you do if asked to represent a legal position that, from a professional opinion, you do not find legally defensible?

RESPONSE: If asked to advance a position that was not legally defensible, I would attempt to persuade the relevant client that it was not a legally defensible position, and attempt to determine a course of action that was both legally defensible and consistent with the client’s interests.

2. I understand that you commented on the Supreme Court’s decision in *McCutcheon v. Federal Election Commission* in 2014. Specifically, you said, “I’ve always thought these were relatively simple cases,” and that the regulation of political speech during an election is the “federal government directly influenc[ing] the political process through restrictions on free speech.”

- a. If confirmed, you would be responsible for defending the federal campaign finance laws that are still in place. Will you commit to upholding the campaign finance laws still on the books?

RESPONSE: If confirmed, I will apply the same standard to campaign finance laws that I would apply to any other Act of Congress. That is, I would defend campaign finance laws whenever a reasonable basis exists for defending them.

- b. Do you still agree with your previous assessment that *McCutcheon* was a “relatively simple case,” despite the fact that it was a 5-4 decision?

RESPONSE: I do not believe that it would be appropriate for me to comment on whether I agree or disagree with any particular Supreme Court case. If confirmed, the positions that I advance on behalf of the United States would not be based on my personal views, but instead on the best interests of the United States.

3. You were Acting Solicitor General when the President issued both of his executive orders targeting the refugee admissions program, and you were responsible for defending those orders against successful challenges in federal court.

- a. What is your reaction to the federal court decisions that have blocked implementation of both of these executive orders?

RESPONSE: After the Ninth Circuit preliminarily enjoined Executive Order 13769, the President withdrew it and replaced it with a new Executive Order. The new Executive Order is in active litigation. It would therefore be inappropriate for me to comment on the legality of that order outside the context of the ongoing litigation.