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

SENATOR SHELDON WHITEHOUSE

1. While in private practice, you worked extensively on behalf of the tobacco company R.J. Reynolds, including in federal racketeering proceedings under RICO.

    a. Was the Department of Justice wrong when it brought and won the civil RICO cases against the tobacco industry?

RESPONSE: In the above-referenced litigation, I was an attorney advancing the views of my client, R.J. Reynolds Tobacco Co. My client disagreed with the Department of Justice's claim, but the district court found my client liable and the D.C. Circuit largely affirmed. *United States* v. *Philip Morris USA Inc., et al.*, 566 F.3d 1095 (D.C. Cir. 2009).

    b. Was the United States District Court for the District of Columbia wrong when it held that the tobacco industry, including your client R.J. Reynolds, constituted a RICO enterprise?

RESPONSE: See Response 1b. As noted, the district court's opinion was largely affirmed by the D.C. Circuit.

    c. You have argued that an association-in-fact cannot include corporations. Was the United States Court of Appeals for the D.C. Circuit wrong when it held that a RICO enterprise "may consist of "a group of individual[s], partnerships, and corporations associated in fact"?

RESPONSE: See Responses 1a-1b.

        i. In speech notes you produced through your questionnaire, you indicated that you were "on a crusade to get this issue back before the Supreme Court." Would you continue that crusade as Solicitor General – reversing course on a position the Department of Justice has consistently held?

RESPONSE: If confirmed, the positions that I would advance as Solicitor General would be based on the long-term interests of the United States, not the interests of my former clients. The long-term interests of the United States would be determined through, among other things, consultation with the relevant individuals and agencies within the federal government, including within the Department of Justice.

2. As you know, one of the chief functions of the Solicitor General is to file amicus briefs before the Supreme Court when the United States is not a party. The support of the

United States carries enormous weight, and indeed, empirical studies have demonstrated the dramatic historical success rate of parties to whom the SG lends its support.

a. When considering amicus participation on a given case, is it the practice of the Office of the Solicitor General to meet with both sides before deciding which, if any, to support?

RESPONSE: To my knowledge, that is the general practice of the Office of the Solicitor General. I do not know how that practice is implemented in the full range of facts and circumstances in which it arises, or whether it is subject to exceptions based on those facts and circumstances.

b. Will you commit that, as Solicitor General, it will be the practice of your office not to confer with only one side in litigation before intervening?

RESPONSE: If confirmed, I intend to adhere to the Office's longstanding practice on this issue.

3. Please list every case you worked on, in any capacity whatsoever, during your 2017 tenure as Acting Solicitor General. For each case, please note the relevant Department of Justice operating component (e.g., Civil Division, Antitrust Division, Civil Rights Division, etc.)

RESPONSE: To the best of my knowledge, and based on a review of Office of Solicitor General files conducted by individuals on my behalf, set forth below are cases on which I worked during my tenure as Acting Solicitor General from January 23-March 10, 2017. Given the scope of the Office's work, it is possible that there could be some matters inadvertently omitted from this list.

Case Name	**Division**	**Court**	**Number**
Akel v. United States	Criminal	SCOTUS	16-6032
Allied Industrial Development Corp. v. Surface Transportation Board	Antitrust	SCOTUS	16-875
Althage v. United States	Criminal	SCOTUS	16-6436
Ameren Services Co. v. FERC	FERC	SCOTUS	16-531
American Hospital Ass'n v. Burwell	Civil	DC	14-851
Ariosa Diagnostics v. Illumina, Inc.	Civil	Fed. Cir.	16-2388
ATI Technologies ULC v. LG Electronics, Inc.	Civil	Fed. Cir.	16-2222
Baginski v. Sessions	Civil	D.D.C.	15-1225
Bandimere v. SEC	Civil	CA10	15-9586
Banks v. United States	Lands	Fed. Cir.	16-2326
Bello v. United States	Criminal	SCOTUS	16-7667
Belmora LLC v. Bayer Consumer Care	Civil	SCOTUS	16-548
Berger & Moore v. Burwell	Civil	E.D.N.C.	17-25
Big Cats of Serenity Springs, Inc. v. Vilsack	Civil	CA10	15-1174
Binderup v. Sessions	Civil	SCOTUS	16-983

Blaine v. United States	Criminal	SCOTUS	16-6574
Blue Belt Techs. v. Mako Surgical Corp.	Civil	Fed. Cir.	16-2470
BNSF Railway Co. v. Tyrrell	Civil	SCOTUS	16-405
Boente v. Baptiste	Civil	CA3	14-4476
Bonin v. CBS Radio, Inc.	Civil	E.D. Wis.	16-674
Bostic v. DC Housing Authority	Civil	D.C.	15-386
Bristol Myers Squibb Co. v. Superior Court of California	Civil	SCOTUS	16-466
Brown v. United States	Criminal	SCOTUS	16-7796
Bruce v. United States	Criminal	SCOTUS	16-7084
Caira v. United States	Criminal	SCOTUS	16-6761
California Public Employees' Retirement System v. ANZ Securities	Civil	SCOTUS	16-373
Carpenter v. United States	Criminal	SCOTUS	16-402
Carrasquillo-Penaloza v. United States	Criminal	SCOTUS	16-6076
Center for the Study of Services v. HHS	Civil	CADC	14-498
Citizens Against Reservation Shopping v. Haugrud	Lands	SCOTUS	16-572
Clarian Health West, LLC v. Burwell	Civil	CADC	14-339
Conrad v. United States	Criminal	SCOTUS	16-603
Cooper v. O'Brien	Criminal	SCOTUS	16-6280
County of Los Angeles v. Mendez	Criminal	SCOTUS	16-369
Coventry Health Care v. Nevils	Civil	SCOTUS	16-0149
Craig v. Princeton Enters, LLC	Civil	E.D. Mich.	16-10027
Cruickshank v. United States	Criminal	SCOTUS	16-7337
Daniels v. Merit Systems Protection Board	Civil	SCOTUS	16-709
Darin v. United States	Criminal	SCOTUS	16-564
Davila v. Davis	Criminal	SCOTUS	16-6219
Dean v. United States	Criminal	SCOTUS	15-9260
Edwards v. United States	Criminal	SCOTUS	16-5760
Esquivel-Quintana v. Sessions	Civil	SCOTUS	16-0054
Federal Education Ass'n and Karen Graviss v. Dep't of Defense	Civil	Fed. Cir.	15-3173
Flores v. Lynch	Civil	CA9	17-55208
Ford v. United States	Criminal	SCOTUS	16-6107
Fox v. United States	Criminal	SCOTUS	16-6989
Golicov v. Lynch	Civil	CA10	16-9530
Graf v. United States	Criminal	SCOTUS	16-6743
Graham v. United States	Criminal	SCOTUS	16-6308
Habeas Corpus Resource Center v. DOJ	Civil	SCOTUS	16-880
Hernandez v. Mesa	Civil	SCOTUS	15-0118
Hawaii v. Trump (and related litigation)	Civil	CA9	17-15589
Honeycutt v. United States	Criminal	SCOTUS	16-142
Howell v. Howell	Civil	SCOTUS	15-1031
Howell v. United States	Marines	SCOTUS	16-536

Impression Products, Inc. v. Lexmark International, Inc.	Civil	SCOTUS	15-1189
In re Andrew Silver	Civil	Texas	16-682
In re Reald Inc.	Civil	Fed. Cir.	17-1156
In re Sherman Lamont Fields	Criminal	SCOTUS	16-293 and 16-294
Internal Revenue Service v. Murphy	Tax	D. Me.	16-08
International Refugee Assistance Project v. Trump (and related litigation)	Civil	CA4	17-1351
Jennings v. Rodriguez	Civil	SCOTUS	15-1204
Jordan v. United States	Criminal	SCOTUS	16-6694
Judicial Watch, Inc. v. Kerry	Civil	CADC	16-6015
Juliana v. United States	Lands	D. Or.	15-1517
Justice v. IRS	Tax	SCOTUS	16-786
Kerr v. Haugrud	Civil	SCOTUS	16-742
King v. Marion County Circuit Court	Civil Rights	CA7	16-3726
Kumar v. Republic of Sudan	Civil	CA4	16-2267
Langbord v. Department of the Treasury	Civil	SCOTUS	16-612
Langston v. United States	Criminal	SCOTUS	16-7737
Lauriano-Esteban v. United States	Criminal	SCOTUS	16-7553
Lee v. United States	Criminal	SCOTUS	16-0327
Leija-Sanchez v. United States	Criminal	SCOTUS	16-5910
Liff v. OIG	Civil	DC	14-1662
Los Angeles County v. Mendez	Civil	SCOTUS	16-369
Lovett v. United States	Criminal	SCOTUS	16-6569
Manning v. United States	Civil	D. Md.	13-1852
Matchett v. United States	Criminal	SCOTUS	16-7598
McFadden v. United States	Criminal	SCOTUS	16-679
McIntosh v. United States	Criminal	SCOTUS	16-7234
McLane Company, Inc. v. EEOC	EEOC	SCOTUS	15-1248
McWilliams v. Jefferson	Criminal	SCOTUS	16-5294
Medina v. Lynch	Civil	D.D.C.	16-1718
Mejia v. Time Warner Cable Inc.; Johnson v. Time Warner Cable Inc.	Civil	S.D.N.Y.	15-6445
Menendez v. United States	Criminal	SCOTUS	16-755
MetLife v. Financial Stability Oversight Council	Civil	CADC	16-5086
Miller v. DOJ	Civil	Fed. Cir.	15-3149
Millhouse v. Heath	Civil	CA3	15-2278
Moses v. Dodaro	Civil	CADC	12-5199
Murray Energy Corp. v. McCabe	Lands	N.D.W.V.	14-39
Nesbitt v. U.S. Army Corp. of Engineers	Civil	CA9	16-3249
Noble Energy, Inc. v. Haugrud	Lands	SCOTUS	16-368
OCA-Greater Houston v. Texas	Civil Rights	CA5	16-51126

Payne v. United States	Criminal	SCOTUS	16-7273
Penaloza-Carlon v. United States	Criminal	SCOTUS	16-7585
Planned Parenthood of Kansas and Mid-Missouri v. Mosier	Civil	CA10	16-3249
Public Citizen v. Trump	Civil	D.D.C.	17-253
Raymond J. Lucia Cos., Inc. v. SEC	Civil	CADC	15-1345
Republican Party of Louisiana v. FEC	N/A	SCOTUS	16-865
Robinson v. United States	Criminal	SCOTUS	16-6550
Russell v. United States	Criminal	SCOTUS	16-6780
Sandoz Inc. v. Amgen Inc. and Amgen Inc. v. Sandoz Inc.	Civil	SCOTUS	15-1039 and 15-1195
Sessions v. Baptiste	Civil	SCOTUS	16-0976
Sessions v. Golicov	Civil	SCOTUS	16-0966
Sessions v. Shuti	Civil	SCOTUS	16-0991
Shuti v. Lynch	Civil	CA6	15-3835
Slone Revocable Trust v. Commissioner of Internal Revenue	Tax	CA9	16-73356
Snipes v. United States	Criminal	SCOTUS	16-7818
Staab v. McDonald	Civil	Veterans Claims	14-957
Stanley v. BOP	Civil	CA9	15-35926
State of Washington v. Trump (and related litigation)	Civil	CA9	17-35105
Stephens v. United States	Criminal	SCOTUS	16-7448
Strong v. United States	Criminal	SCOTUS	16-6861
Takeda Pharmaceutical Co. v. Array Biopharma Inc.	Civil	Fed. Cir.	17-1079
TC Heartland LLC v. Kraft Foods Group Brands LLC	Civil	SCOTUS	16-341
Turner v. United States; Overton v. United States	Criminal	SCOTUS	15-1503; 15-1504
Tyree v. Chao	Civil	SCOTUS	16-7080
U.S. Bank N.A. v. The Village of Lakeridge, LLC	Civil	SCOTUS	15-1509
United States v. Alta Wind I Owner Lessor C	Tax	Fed. Cir.	17-1410
United States v. Atkins	Criminal	CA6	16-5531
United States v. Broadbent	Civil	D. Utah	12-313
United States v. Cordes	Criminal	E.D. Tenn.	14-124
United States v. Dinkins	Criminal	D.S.C.	11-2061
United States v. Gardner	Criminal	N.D. Cal.	09-203-1
United States v. Gilbert	Criminal	N.D. Ala.	16-130
United States v. Goldsberry	Criminal	E.D. Mo.	14-91
United States v. Haak	Criminal	W.D.N.Y.	15-220
United States v. Hampton	Criminal	D.S.C.	07-1517

United States v. Hampton	Criminal	CA8	16-3971
United States v. Hoffman	Criminal	E.D. La.	14-22
United States v. Lafon	Criminal	CA9	16-10044
United States v. Lambis	Criminal	S.D.N.Y.	15-734
United States v. Lewis	Criminal	SCOTUS	16-7535
United States v. Maldonado-Burgos	Criminal	CA1	15-2145
United States v. Mar-Jac Poultry, Inc.	Civil	CA11	16-17745
United States v. New Mexico Supreme Court	Civil	CA10	14-2037
United States v. Pennick	Criminal	W.D.N.Y.	10-191-2
United States v. Powers	Criminal	CA2	15-3867
United States v. Reinhart	Criminal	N.D. Cal.	15-330
United States v. Robinson	Criminal	SCOTUS	16-6550
United States v. Santiago	Criminal	D.N.J.	15-418
United States v. Sparkman	Criminal	CA7	12-3683
United States v. Tanksley	Criminal	CA5	15-11078
United States v. Taylor	Criminal	W.D. Mich.	15-106
United States v. Walton	Criminal	N.D. Tex.	15-364-1
United States v. Weaver	Civil	CA2	16-3861
United States v. West	Criminal	E.D. Wash.	14-66
United States v. Wise	Criminal	CA5	16-20808
United States v. Zuk	Criminal	CA4	16-4727
USA ex rel. Able v. U.A. Bank, NA	Civil	SCOTUS	16-130
Valdez v. United States	Criminal	SCOTUS	16-6872
Veasy v. Abbott	Civil Rights	S.D. Tex.	13-193
Vennes v. United States	Criminal	SCOTUS	16-6224
Verdin-Garcia v. United States	Criminal	SCOTUS	16-6786
Viloski v. United States	Criminal	SCOTUS	16-508
Vitreo Retinal Consultants of the Palm Beaches v. DHS	Civil	SCOTUS	16-808
Walker v. City of Calhoun County	Civil Rights	CA11	16-10521
Water Splash, Inc. v. Menon	Civil	SCOTUS	16-254
West Virginia ex rel. Morrisey v. Department of Health and Human Services	Civil	SCOTUS	16-721

4. During your hearing, you stated that as Acting Solicitor General, when considering whether to authorize appeals, you "had a chance to see how the [appeal authorization process] actually functions." You noted that the Solicitor General has "an enormous amount of assistance," and that "in any case where the government is considering taking an appeal, taking a position, the first thing that happens is the views of all of the affected agencies are solicited. They then send those views over to the Department of Justice where they're further reviewed by attorneys in the relevant operating components, whether it's the Antitrust Division, the Civil Division, the Tax Division, the Criminal Division. Those views then get forwarded to the Solicitor General's Office where they're reviewed by one of our fine career assistants to the [Solicitor] General, and then one of the four deputies to the Solicitor General. It's only at that point, with the benefit of all of

these views, does the issue then actually land on the Solicitor's desk, and even then, often the Solicitor General will convene meetings of all of the relevant entities, agencies, and individuals to ensure that whatever position is taken is the position that reflects the interest of the United States as determined by the government as a whole." You described this process as "absolutely essential" given that the Department is representing the views of the United States as a whole.

a. With respect to any case you listed in response to Question 3 above, did you ever make an appeal or amicus participation determination without the case going through each step of the procedure you described above? If yes, please describe in detail how the procedure was different with respect to each applicable case.

RESPONSE: In my response to Senator Lee's question, I intended to describe the general process that I observed during my brief tenure as Acting Solicitor General that applied to appeal recommendations in most cases. During my roughly six weeks serving as Acting Solicitor General, I did not have an opportunity to observe all of the various facts and circumstances in which appeal recommendations are made. I suspect that the application of that process may vary from case to case depending on the nature of the case. In addition, there may be some cases that require emergency and/or expedited treatment or for which, given the nature of the case, the need for an appeal is clear. As to the handling of any specific case, I believe it would be inappropriate to comment on internal Executive Branch deliberations.

b. With respect to any case you listed in response to Question 3 above, did you ever make an appeal or amicus participation determination without having first reviewed a memorandum by a career attorney in the relevant operating component? If yes, please describe the circumstances in detail with respect to each applicable case.

RESPONSE: See Response 4a.

c. With respect to any case you listed in response to Question 3 above, did you ever make an appeal or amicus participation determination without having first reviewed a memorandum drafted by either an Assistant to the Solicitor General or a Deputy United States Solicitor General? If yes, please describe the circumstances in detail with respect to each applicable case.

RESPONSE: See Response 4a.

d. With respect to any case you listed in response to Question 3 above, did you ever make an appeal or amicus participation determination based on conversations with political appointees or acting political appointees in the relevant operating division?

RESPONSE: See Response 4a. It should be noted that, to my knowledge, memoranda provided by the operating components are often signed by the head or the acting head of that component.

e. Is it appropriate for the Solicitor General to discuss a case with political appointees in the front office of a DOJ operating component before the operating component's formal views on that case have been presented to OSG through the process you described at your hearing?

RESPONSE: See Responses 4a-4d.

f. As Acting Solicitor General, were you ever consulted by any political appointee in the front office of any DOJ operating component about a case that did not ultimately reach OSG through the process you described in your hearing? If yes, please identify any applicable case and explain why the process you described was not completed.

RESPONSE: See Responses 4a-4e. In addition, I should note that the Office of Solicitor General is frequently asked to advise on matters that do not involve appeal or amicus recommendations.

g. As Solicitor General, will you commit to following the procedure you described in your hearing with respect to every appeal or amicus participation determination? If no, why not?

RESPONSE: See Responses 4a-4d. If confirmed, I intend to adhere to the Office of Solicitor General's past practices for handling appeal and amicus recommendations.

5. The Trump Administration's Department of Justice has reversed course from previously held positions on a number of high profile cases and policies. For example: the DOJ backtracked on its argument that Texas acted with discriminatory intent in passing its voter ID laws; changed course to argue that the Consumer Financial Protection Bureau should be stripped of its independence; withdrew its "Dear Colleague" letter on protections for transgender students under Title IX of the Education Amendments of 1972; reversed its previous stance on the federal use of private prisons; and signaled to courts its intention to reverse course in cases concerning the Clean Power Plan and the Fair Labor Standards.

a. In your view, when, if ever, is it appropriate for the United States to change or reverse litigating positions during pending litigation?

RESPONSE: Although there are times when it is appropriate for the United States to change litigating positions, as a general matter, it should be done infrequently in order to foster continuity. It is, for example, appropriate to change litigating positions when the underlying policy at issue has changed. For example, if an agency regulation is subject to litigation, and the agency at issue changes the regulation, it may be both appropriate and necessary to change litigating positions.

b. Is it appropriate for the United States to change litigating position on policy grounds? Or only when a determination is made that a previous position was incorrect as a matter of law?

RESPONSE: See Response 5a.

c. Is it appropriate for the United States to change litigating position based on a President's campaign promises?

RESPONSE: See Responses 5a-5b.

d. Is there a risk that the United States will lose credibility with a court if it switches positions during litigation?

RESPONSE: Although there are times when it is appropriate for the United States to change litigating positions, I believe that, if the United States changes positions too often and without a sound basis for doing so, then there is a risk of undermining credibility with the courts.

6. As acting Solicitor General, you were involved in the defense of President Trump's Executive Order entitled "Protecting the Nation from Foreign Terrorist Entry into the United States," Exec. Order 13769 (Jan. 27, 2017).

    a. In your personal view, was that Executive Order constitutional?

        i. Had you determined that the travel ban was unconstitutional, how would you have handled that?

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.

b. What may a court consider in attempting to determine the purpose of a particular government action? For example, may a court look to legislative history to determine the purpose of an Act of Congress?

    i. Is it appropriate for the Solicitor General to rely on legislative history in defending an Act of Congress during litigation?

RESPONSE: The Supreme Court has held that if the text of a statute is ambiguous, it is appropriate to look to a statute's legislative history in order to ascertain legislative intent.

See, e.g., *Milner* v. *Department of Navy*, 562 U.S. 562, 572 (2011); *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U.S. 546, 567-568 (2005).

c. May courts consider the President's statements as evidence of his motivation in signing an executive order? For example, should a court be able to consider that Trump promised "a total and complete shutdown of Muslims entering the United States"?

RESPONSE: See Response 6a.

d. During your tenure in the Associate Attorney General's office, have you had any involvement in the DOJ's defense of President Trump's revised "Executive Order Protecting the Nation from Foreign Terrorist Entry Into the United States," Exec. Order 13780 (Mar. 6, 2017). If yes, please describe your involvement in detail.

RESPONSE: During my time in the Associate Attorney General's Office, I have reviewed and commented on briefs involving challenges to Executive Order 13780 and have participated in preparations for oral arguments in the matter.

e. In recent Fourth Circuit proceedings in the challenge to President Trump's revised travel ban (International Refugee Assistance Project v. Trump), the DOJ argued that "searching for governmental purpose outside the operative terms of governmental action and official pronouncements is fraught with practical 'pitfalls' and 'hazards that would make courts' task "extremely difficult."

i. Do you agree with that proposition?

RESPONSE: See Response 6a.

ii. In making that argument, the government quoted Palmer v. Thompson, 403 U.S. 217 (1971), a case in which the Supreme Court permitted the city of Jackson, MS, to close down its swimming pools after being ordered to integrate them. This case has been widely discredited. Was that citation appropriate? Is Palmer still good law?

RESPONSE: See Response 6a.

7. What is your understanding of the DOJ's policies with respect to the hiring and firing of career attorneys?

a. Is it appropriate to use an ideological litmus test when hiring career line lawyers?

RESPONSE: I believe it is important that all Justice Department officials understand and comply with the laws that govern their conduct, including the civil service protection laws. If confirmed, I am committed to ensuring that those with hiring authority in the Office of Solicitor General understand and comply with their obligations with respect to hiring.

b. Are you familiar with the joint report of the DOJ Inspector General and Office of Professional Responsibility on politicized hiring and other personnel actions in the Civil Rights Division under the Bush administration?

RESPONSE: Although I have not studied the report in detail, I am generally familiar with it.

c. Will you commit to following the recommendations made by OIG and OPR in that report? What other steps would you take to ensure similar misconduct is not repeated in your hiring and firing practices?

RESPONSE: See Response 7a-7b.

d. Will you commit to hiring career attorneys regardless of ideology?

RESPONSE: See Response 7a-7b.

8. What is your understanding of the policy governing contacts between the White House and the Office of the Solicitor General? In what circumstances would it be appropriate for the White House to contact OSG about a pending or potential case?

   RESPONSE: The Department of Justice is governed by procedures issued by the Attorney General limiting communications between the White House and the Justice Department concerning criminal prosecutions and civil litigation. The purpose of these procedures is to prevent inappropriate political influence or the appearance of inappropriate influence on Department of Justice matters.

9. Please describe your views on the Solicitor General's legal ethical duty of loyalty, including to whom such a duty is owed.

   a. Is the Solicitor General's duty of loyalty to the President, or to the American people?

   RESPONSE: The Solicitor General owes responsibilities to all three branches of government and, ultimately, to the American people as a whole. 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. Is it possible that the President's agenda and the Solicitor General's obligation to the United States could conflict? As Solicitor General, how would you handle a situation in which you felt those interests were at odds?

RESPONSE: Traditionally, the Solicitor General will defend laws passed by Congress when a reasonable legal defense is available, unless the law encroaches on the President's Article II powers. I believe that a similar standard applies to Executive Orders and other executive actions.

If the President were to ask me to advance positions that conflicted with the Solicitor General's obligation to the United States, I would, to the best of my ability, ascertain the long-term interests of the United States. In conducting that assessment, I would consider, among other things, the views of the agencies that have a stake in the matter, the views of the relevant components of the Department of Justice, and any applicable regulations, statutes, and constitutional provisions. Based on this judgment, I would attempt to persuade the President to agree with me or to defer to my judgment.

If I were nonetheless directed to advance positions for which there was no reasonable basis, I would resign.

c. As Solicitor General, how would you handle a case that implicated President Trump's business interests?

RESPONSE: The resolution of issues such as that referenced in the question above will turn on the facts and circumstances of the particular matter. Should such matter arise, I would consult with the relevant officials within the Department of Justice to determine how best it should be handled.

d. Do you believe it is the duty of the Solicitor General to advance to political agenda of the President?

RESPONSE: Traditionally, the Solicitor General will defend laws passed by Congress when a reasonable legal defense is available, unless the law encroaches on the President's Article II powers. I believe that a similar standard applies to Executive Orders and other executive actions. If confirmed, I will defend laws passed by Congress, the President's Executive Orders, and other executive actions when a reasonable defense is available, but not otherwise.

10. Do you agree that the Solicitor General has an obligation to enforce and defend laws of Congress?

a. Does the Solicitor General have discretion to choose which laws of Congress he or she defends in court?

RESPONSE: The longstanding view of the Office of the Solicitor General is that the Solicitor General should defend the constitutionality of a statute passed by Congress when there is a reasonable basis for defending it, unless it encroaches on the President's Article II powers. I agree with this standard.

b. Can the Solicitor General choose not to enforce or defend certain laws based on policy preferences?

RESPONSE: See Response 10a. The Solicitor General's personal policy preferences should play no role in his or her decision to enforce or defend certain laws.

c. Is it appropriate for the Solicitor General to advance a legal position based on the President's campaign promises?

RESPONSE: Traditionally, the Solicitor General will defend laws passed by Congress when a reasonable legal defense is available, unless the law encroaches on the President's Article II powers. I believe that a similar standard applies to Executive Orders and other executive actions. If confirmed, I will defend Acts of Congress, the President's Executive Orders, and other executive actions when a reasonable defense is available, but not otherwise.