

Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015

QUESTIONS FROM SENATOR TILLIS

1. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked several questions about litigation filed by the United States Department of Justice against North Carolina regarding election law changes enacted by the state during 2013. During the course of those questions, I pointed out that one of the claims in the North Carolina litigation involved North Carolina's elimination of seven days of so-called "early voting" by reducing the early voting window from 17 to 10 days. The Department of Justice claimed the 7 day reduction was a violation of the law. However, numerous states do not offer any form of early voting. Therefore, if you are confirmed to serve as the next United States Attorney General, will you instruct the Voting Rights Section of the Department to pursue litigation against states that do not offer early voting at all on the same basis as the Department has brought suit against NC for merely reducing the number of early voting days from 17 to 10? If not, would you please explain the rationale for why you would not have the Department pursue such states?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not analyzed closely the election laws of North Carolina and other states. My general understanding is that the Department considers questions of the validity of voting practices based on a variety of factors, including the requirements of the federal law being enforced, the particular facts of the practice being investigated, and the specific facts in the jurisdiction. A number of these questions are at issue in pending litigation in which the Department is participating, and for this reason I cannot comment further.

2. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked several questions about litigation filed by the United States Department of Justice against North Carolina regarding election law changes enacted by the state during 2013. During the course of those questions, I pointed out that one of the claims in the North Carolina litigation involved North Carolina's elimination of "same day registration." However, numerous states have never offered "same day registration." Therefore, if you are confirmed to serve as the next United States Attorney General, will you instruct the Voting Rights Section of the Department to pursue litigation against states that never offered "same day registration" on the same basis as the Department has brought suit against NC for eliminating "same day registration?" If not, would you please explain the rationale for why you would not have the Department pursue such states?

RESPONSE: As set forth above, in my current position, I have not had occasion to analyze closely the election laws of North Carolina and other states. My general understanding is that the Department considers questions of the validity of voting practices based on the particular requirements of the federal law being enforced, the particular facts of the practice being

investigated, and the particular facts in the jurisdiction. A number of these questions are at issue in pending litigation in which the Department is participating, and for this reason, I cannot comment further.

3. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked several questions about litigation filed by the United States Department of Justice against North Carolina regarding election law changes enacted by the state during 2013. During the course of those questions, I pointed out that one of the claims in the North Carolina litigation involved North Carolina's elimination of the counting of votes cast on election day outside the precinct where a voter is registered. Given that numerous states do not count votes cast out of precinct on election day, will you, if you are confirmed to serve as the next United States Attorney General, instruct the Voting Rights Section of the Department to pursue litigation against those states? If not, please explain why not.

RESPONSE: My general understanding is that the Department considers questions of the validity of voting practices based on the particular requirements of the federal law being enforced, the particular facts of the practice being investigated, and the particular facts in the jurisdiction. A number of these questions are at issue in pending litigation in which the Department is participating, and for this reason, I cannot comment further.

4. During the January 28, 2015 hearing, you testified that "the right and obligation to work is shared by everyone in this country, regardless of how they came here." Do you believe the citizens of any foreign country in the world has the right to work in the United States if they can only reach America's shores? Do you believe individuals who have entered the country illegally also have the right to vote in local, state, or national elections? Please explain your answer.

RESPONSE: With respect to my comment during my congressional testimony, I was stating my personal belief that it would be better for individuals in this country to be working to support themselves and their families and contributing to our economy than remaining unemployed. But it is my understanding that only citizens and those duly authorized to seek employment by the Department of Homeland Security are legally able to work. With regard to voting, it is my understanding that individuals who have entered the country illegally do not have any federal right to vote in our elections. I understand that various federal statutes enacted by Congress provide criminal penalties for false assertions of United States citizenship in connection with registration and voting, as well as criminal penalties for aliens voting in elections for federal office. If I am confirmed as Attorney General, I am committed to enforcing those statutes in an even-handed manner.

5. In July of 2014, during a preliminary injunction hearing in the case of *Holder v. North Carolina*, 997 F. Supp. 2d 322 (M.D.N.C. 2014), an expert testifying on behalf of the United States Department of Justice opined:

Also, understanding within political science, that people who register to vote the closer and closer one gets to Election Day tend to be less sophisticated voters, tend to be less educated voters, tend to be voters who are less attuned to public affairs. . . . People who correspond to those factors tend to be African Americans, and, therefore, that's another vehicle through which African Americans would be disproportionately affected by this law.

Are you willing to condemn the reasoning of this expert witness insofar as his testimony effectively asserted that African American voters tend to be "less sophisticated" than non-minority voters? If not, please explain why not. Would you agree that the Department of Justice should not use taxpayer dollars to retain such experts who hold such opinions?

RESPONSE: Because this question relates to pending litigation in which the Department is participating, I cannot comment.

6. Without regard to the context of the statement referenced in Question 5, above, do you agree that any assertion that minority voters are somehow "less sophisticated" than non-minority voters should be rejected as repugnant and offensive? If not, please explain why not.

RESPONSE: Because this question relates to pending litigation in which the Department is participating, I cannot comment.

7. Do you believe an attorney disciplined by a state bar, or one found to have committed prosecutorial misconduct, should be allowed to serve as an attorney at the United States Department of Justice?

RESPONSE: I am committed to ensuring that all Department attorneys carry out their duties with the highest level of integrity and professionalism, and to pursuing appropriate discipline for those who do not. The Department takes into consideration all aspects of a candidate's suitability for employment when making hiring decisions, including whether the attorney has a history of professional misconduct. By their nature, professional misconduct findings are fact-based and varied, and the Department carefully considers the allegations and conclusions of any prior discipline or misconduct findings when evaluating an attorney's suitability for employment. I will follow the Department's suitability rules and policies as applied at the time of hiring, and will support measures that ensure Department attorneys carry out their duties using excellent judgment and consistently adhering to all applicable professional responsibilities. Public service is a public trust, and I believe it is important for the Department to maintain the highest standards for all of its employees.

8. In January of 2014, you presented remarks at the Martin Luther King, Jr. Center in Long Beach, New York. During the course of those remarks, you stated the following:

There is still more work to do. People tell us the dream is not realized because dreams never are. Mandela and King knew that we had to continue working. I'd be remiss if I didn't tell you that under this President and under this Attorney General the Department of Justice is committed to following through with those dreams. 50 years after the march on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for. We stand in this country, people try and take over the state house and reverse the goals that have been made in voting in this country. But I am proud to tell you that the Department of Justice has looked at these laws and looked at what's happening in the Deep South and in my home state of North Carolina has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits will continue. [Emphasis added.]

With regard to the comment that "people try and take over the state house," please state to whom the term "people" refers, what "state house" was taken over, and what "goals that have been made in voting" are that have been reversed.

RESPONSE: The speech as a whole was a commentary on the common struggles of Nelson Mandela and the Reverend Martin Luther King, Jr., and the importance of individual commitment and perseverance, particularly in education, to help advance civil rights goals. This portion of the speech was about the importance of protecting the constitutional right to vote and the need to ensure that all eligible citizens can exercise that right free from discrimination. Whenever warranted by the facts and law, it is important to use all legal tools to safeguard the right of every eligible citizen to register to vote and to cast a ballot, as the Department has done, and continues to do in circumstances in which the facts and the law permit. The highlighted text does not refer to any specific person or jurisdiction. Rather, it is about the continued need to remain vigilant and use all legal authorities where appropriate based on the facts and law.