

Senator Dick Durbin
Written Questions for Brian Benczkowski, Dabney Friedrich and Stephen Schwartz
August 1, 2017

For questions with subparts, please answer each subpart separately.

Questions for Stephen Schwartz

1. The American Bar Association's Standing Committee on the Federal Judiciary does not typically review the qualifications of nominees to the Court of Federal Claims. This is fortunate for you, because the ABA believes that nominees ordinarily should have at least 12 years of practical legal experience before they can be considered for the federal bench. You do not have 12 years of practical legal experience. You only graduated law school in 2008.

- a. **Do you agree with the American Bar Association's Standing Committee on the Federal Judiciary that candidates for federal judgeships should have at least 12 years of practical legal experience?**

Response: I believe that experience, including type, time, and quality of past work, is important for judicial nominees. I was not involved in setting the American Bar Association Standing Committee's standards, and cannot comment on their reasons.

- b. **Do you believe that you are better qualified to serve on the Court of Federal Claims than other candidates who have more practical legal experience than you? If so, why?**

Response: I believe that I am qualified for the position to which I have been nominated.

2. You have advocated a number of controversial positions in litigation.

- a. **Did you disagree with any of the litigation positions you advocated on behalf of your clients? If so, please list the positions you advocated with which you disagreed.**

Response: On a number of occasions, my obligation of zealous advocacy on behalf of my clients called on me to argue positions that I believed were warranted under the law, see Fed. R. Civ. P. 11, but which I believed, in my professional judgment, that the forum court was unlikely to agree with. My obligations as an attorney to my clients preclude me from disclosing any particular circumstance where that was the case.

- b. **What can you point to in your record to provide reassurance that, if confirmed, you could set aside your personal views and serve as an impartial and non-ideological judge?**

Response: Like many judicial nominees, I have represented a wide variety of clients in cases involving a wide variety of issues. While some of them have been associated with political controversy, I have also been involved in a large amount of general commercial

litigation with little, if any, political salience. I have represented farmers, small-boat cod fishermen, family business owners, and an inmate of the New York State prison system. I have been both aligned with and adverse to the federal government's positions at various times. Generally speaking, my legal career has been marked not by efforts to court political controversy, but by consistent contact with complex and unsettled legal issues across a wide range of constitutional and statutory fields. I believe that my own work has been characterized not only by integrity and careful legal reasoning, but by objectivity and fairness. The diversity of interests I have represented, and the ways that I have represented those interests, should encourage confidence that I can fulfill the obligations of a judge.

3. **Have you ever litigated a case before the Court of Federal Claims? If so, please list the case(s) and a short description of each case.**

Response: I have not litigated in the Court of Federal Claims. I have litigated in the U.S. Court of Appeals for the Federal Circuit, which resolves appeals from the Court of Federal Claims. I have also litigated a variety of matters that involved fields of law that the Court of Federal Claims regularly addresses, legal standards it regularly applies, and the federal trial court procedures that its cases involve.

4. **Why did you list *Brewer v. Arizona Dream Act Coalition* as the most significant matter which you personally handled?**

Response: I did not list matters strictly in order of significance, but also roughly in reverse chronological order. I had recently completed the *amicus* brief in that matter at the time I began the Questionnaire.

5. You say in your questionnaire that you have been a member of the Federalist Society. **Why did you join the Federalist Society?**

Response: I joined the Federalist Society in order to hear a variety of perspectives on important legal issues, delivered by knowledgeable scholars and legal advocates.

6. **Do you agree with the statements espoused by the Federalist Society on its website?**
- Do you believe it was appropriate for the President to announce the involvement of the Federalist Society in the selection of his candidates for the Supreme Court?**
 - Do you believe that the President's announcement sent a message that lawyers and judges should not assert views that are at odds with the Federalist Society if they aspire to serve on the Supreme Court?**
 - Are you concerned that the announced involvement of the Federalist Society and Heritage Foundation in selecting Supreme Court candidates undermines confidence in the independence and integrity of the federal judiciary?**

Response to (a)-(c): I do not know the exact statements to which this question refers or their context and circumstances. I therefore cannot comment on my opinions of them. Further, this question refers to political matters about which ethically I cannot opine as a judicial nominee. See Canon 5 of the Code of Conduct for United States Judges.

7. The Federalist Society website lists the organization's statement of purpose. That statement begins with the following: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society." **Do you agree or disagree with this statement? Please explain your answer.**

Response: I was not involved in writing that statement, and do not know precisely what it means or whether I agree with the statement.

8. **Please list all years in which you attended the Federalist Society's annual national convention.**

Response: To my recollection, I attended parts of the national convention several times between 2009 and 2016. On some occasions I was a registered attendee, and on other occasions I was a guest at the annual dinner at a table purchased by Kirkland & Ellis LLP, my former firm. I have reviewed my records and have not been able to determine precisely which years I attended.

9. **Do you agree, as a factual matter, with President Trump's claim that 3 to 5 million people voted illegally in the 2016 election?**

Response: I have no information that would allow me to form an opinion as to the accuracy of this statement. Additionally, this question refers to political matters about which ethically I cannot opine as a judicial nominee. *See* Canon 5 of the Code of Conduct for United States Judges.

10. **Do you agree with President Trump's 2014 statement that "Global warming is an expensive hoax"?**

Response: I have no information that would allow me to form an opinion as to the accuracy of this statement. Additionally, this question refers to political matters about which ethically I cannot opine as a judicial nominee. *See* Canon 5 of the Code of Conduct for United States Judges.

11. **Do you believe that human activity is changing our climate?**

Response: I regard the role of human activity in climate change as a matter of scientific evidence, not of personal belief. I have not studied the evidence and therefore cannot comment on it.

12. **Do you believe that the right to vote is fundamental?**

Response: The Supreme Court has stated that "the political franchise of voting ... is regarded as a fundamental political right, because preservative of all rights." *Yick Wo v.*

Hopkins, 118 U.S. 356, 370 (1886). I would apply all applicable precedents if I am fortunate enough to be confirmed.

13. **Please summarize the holding of the Supreme Court's decision in *Shelby County v. Holder*.**

Response: The Supreme Court in *Shelby County* invalidated the coverage formula for preclearance under Section 5 of the Voting Rights Act.

14. **Please summarize the holding of the Fourth Circuit's decision in *North Carolina v. North Carolina State Conference of the NAACP*, a case for which you filed an unsuccessful cert petition on behalf of North Carolina.**

Response: The Fourth Circuit held that certain North Carolina voting reforms were motivated by intent to discriminate on the basis of race.