

Senate Judiciary Committee
“Nominations”
Questions for the Record
July 25, 2017
Senator Amy Klobuchar

Question for Mr. Schwartz, Nominee to be Judge of the United States Court of Federal Claims:

The Court of Federal Claims has special jurisdiction, hearing claims brought under the Constitution, federal statutes, regulations, and contracts with the United States. The court’s cases include takings claims, government contracts, military pay claims, and certain patent and copyright matters.

- Can you comment as to whether you have extensive legal experience with the types of cases that fall within the Court’s jurisdiction? Do you believe that your past experiences have prepared you to handle the subject matter that will come before you in the position to which you have been nominated?

Response: I believe that my past experiences have prepared me to handle the subject matter that would come before me as a judge on the Court of Federal Claims. My experience has included many areas of law that regularly come before the Court of Federal Claims, including Takings Clause issues, *see Horne v. U.S. Department of Agriculture*, 133 S. Ct. 2053 (2015), as well as other subjects including unconstitutional exactions and certain patent questions. A large number of my cases have involved claims under the Administrative Procedure Act, which governs many of the so-called “bid protest” cases which reach the Court of Federal Claims under the Tucker Act. *See* 28 U.S.C. § 1491(b). Most of my litigation experience, furthermore, has involved complex issues of statutory and regulatory interpretation arising from federal agencies. Those issues are comparable in subject matter and methodology to the types of cases a Court of Federal Claims judge must resolve. My experience has involved a significant amount of district court work—including pleadings, dispositive motions, written discovery, depositions, trial preparation, and presenting witness testimony—much of which I led, and all of which is applicable under the rules of the Court of Federal Claims.

My education and experience have also taught me that no attorney has all the answers relevant to every legal situation he or she might encounter. The best way to make important decisions is with humility, taking into account the views of affected parties. If confirmed, I intend to apply that lesson by managing my docket with the involvement and input of the attorneys appearing before me.

You recently represented the state of North Carolina, defending a number of restrictions the state placed on voting following the Supreme Court’s *Shelby County* decision. The Fourth Circuit described these restrictions as “target[ing] African Americans with almost surgical precision.” I have been deeply troubled that many states have moved to restrict access to voting since the Supreme Court decision in *Shelby County v. Holder*, which struck down a key provision of the Voting Rights Act.

- Can you describe your role in representing North Carolina in this case?

Response: My firm was hired to represent North Carolina after the Fourth Circuit's decision. The matter was pending with my firm when I joined in 2016, and I became involved with the case at that time. I was responsible for drafting and editing the State's petition-stage filings, in cooperation with my firm colleagues and local counsel. We presented arguments that the Fourth Circuit's factual conclusions, which overturned contrary conclusions by the district court, were premised on several significant legal errors.

- Do you consider protecting the right to vote and guarding against voter discrimination to be an important responsibility of the Department of Justice?

Response: Yes. The Fifteenth Amendment provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." The Fourteenth Amendment guarantees "due process of law" and "the equal protection of the laws." Both amendments grant Congress the authority to enforce those guarantees through legislation. Congress has legislated extensively in the field of voting rights, and has delegated authority to enforce those rights to the Department of Justice.