

**QUESTIONS FOR THE RECORD
RACHEL L. BRAND
NOMINEE TO BE ASSOCIATE ATTORNEY GENERAL**

SENATOR RICHARD DURBIN

1. You stated in your questionnaire that you worked for the U.S. Chamber Litigation Center as Chief Counsel for Regulatory Litigation from 2011-2013, as Vice President and Chief Counsel for Regulatory Litigation for 2013-2014, and as a Senior Advisor (consultant) from 2014-2016. Will you commit that, if you are confirmed, you will recuse yourself from any existing or future investigation, cases, or matters related in any way to the U.S. Chamber of Commerce or the U.S. Chamber Litigation Center (formerly the National Chamber Litigation Center)?

RESPONSE: I take recusal questions very seriously and will follow the rules and procedures set forth in federal law and in the canons of legal ethics, consulting with the ethics officials in the Department of Justice.

2. This month marks the 52nd anniversary of what has come to be known as Bloody Sunday. On March 7, 1965, John Lewis and Reverend Hosea Williams led 600 brave civil rights activists in a march over the Edmund Pettus Bridge in Selma, Alabama.

The marchers were brutally beaten as state troopers turned them back and chased them down. John Lewis was beaten unconscious and nearly killed. A few months after Bloody Sunday, President Lyndon B. Johnson signed the Voting Rights Act into law—guaranteeing that the right to vote would not be restricted through clever schemes, like poll taxes and literacy tests, that were devised to keep African Americans from voting. In 2006, when Congress voted to reauthorize the Voting Rights Act, Congressman Lewis wrote an op-ed about the continuing need for a strong Voting Rights Act. He noted:

Congress came to a near-unanimous conclusion: While some change has occurred, the places with a legacy of long-standing, entrenched and state-sponsored voting discrimination still have the most persistent, flagrant, contemporary records of discrimination in this country.

Do you agree with Congressman Lewis' statement that persistent and flagrant voting discrimination still exists in states with a history of voting discrimination?

RESPONSE: Enforcement of the Voting Rights Act has been an important law enforcement function of the Department of Justice for many years. The Civil Rights Division has played a historic role in stamping out the horrific and discriminatory conduct described in the question. While I am not familiar with Congressman Lewis' statement of eleven years ago, I can say that if confirmed, I will be committed to supporting the Civil Rights Division in enforcing the Voting Rights Act as it has been enacted by Congress and interpreted by the federal courts.

3. In 2013, a divided Supreme Court voted 5-4 in *Shelby County v. Holder* to invalidate part of the Voting Rights Act. The Court struck down a provision of the Act that required certain jurisdictions to “preclear” any changes to their voting laws with the Department of Justice.

Since the decision, several states have put in place restrictive state voting laws which have a disproportionate impact on lower-income and minority voters. For example, hours after the *Shelby County* decision, Texas state officials announced that they would immediately implement a strict photo ID requirement for in-person voting, which Texas first tried to put in place in 2011. This burdensome voter-ID law had previously been blocked by both the Department of Justice and a federal appeals court, due to the law’s harmful impact on poor and minority voters.

Last summer, the Fifth Circuit held that the law has a discriminatory effect on voters and violates the Voting Rights Act. The Fifth Circuit also remanded the case for a new hearing on the question of whether the law was passed with racially discriminatory intent. Last month, before the new hearing began, the Justice Department asked the district court to dismiss its claim that the Texas law was enacted with discriminatory intent.

- a. Do you agree with the Justice Department’s decision to switch positions in this case?
- b. Will you commit to accept the recommendations of career Department attorneys in the Voting Section in enforcement cases, if you are confirmed?

RESPONSE: Please see the response to Question 2. I have not been involved in the case you referenced and had no role in formulating the Department’s position. Because that case involves pending litigation, it would not be appropriate for me to comment on it.

4. During my time as Chairman of the Subcommittee on the Constitution, Civil Rights, and Human Rights, I held a series of hearings that examined discriminatory state voting laws. During these hearings, we heard over and over again that restrictive voting laws, such as the law implemented in Texas, have a disproportionate impact on lower-income, minority, youth, elderly, and other vulnerable voting populations.

I asked the witnesses and state officials testifying at these hearings whether there were any widespread instances of voter fraud to justify these laws, and they were unable to point to any examples. They cited only a handful of prosecutions over the last decade.

The Washington Post recently examined this issue and concluded that out of the more than 135 million votes cast in the 2016 election, there have been only four documented cases of voter fraud. And a 2014 analysis by law professor Justin Levitt found only 31 incidents of voter fraud out of hundreds of millions votes cast since 2000. These findings are hardly a justification for restrictive measures that make it difficult for many Americans to exercise their fundamental right to vote.

Despite these conclusions, President Trump has claimed without any evidence that three to five million people voted unlawfully in the 2016 election.

- a. Do you agree with the overwhelming evidence that voter fraud is not a widespread issue in our elections?
- b. Do you agree with President Trump's assertions of widespread illegal voting in American elections?

RESPONSE: I have no personal knowledge that would enable me to express an opinion on these factual questions.

5. On January 13, the City of Chicago and the Justice Department signed an Agreement in Principle in which they commit to negotiate reforms to ensure sustainable, constitutional and effective policing at CPD. It was the assessment of the career Justice Department professionals who conducted the CPD investigation that CPD must undergo significant reforms to rebuild trust with the communities most challenged by violent crime and that "it is not likely to be successful in doing so without a consent decree with independent monitoring."

Will you commit that, if confirmed, you will work to honor the agreement that the Justice Department signed and pursue an enforceable consent decree?

RESPONSE: As I have not been involved in this case and do not have full knowledge of the facts the circumstances. Because that case involves pending litigation, it would not be appropriate for me to comment on it.

6. You previously served in the Administration of President George W. Bush. After 9/11, President Bush repeatedly emphasized that Muslims are not our enemies. He made it clear that our war was with the terrorists who perverted the teachings of Islam, not with Muslims who were faithful to what he called "a faith based upon love, not hate."
 - a. Can you please tell me about your attitude towards Islam and American Muslims?
 - b. Will you commit to enforcing civil rights laws to combat discrimination against American Muslims, including federal hate crimes laws?

RESPONSE: I believe that religious diversity and religious tolerance are hallmarks of American history, culture, and constitutional law. I have said previously that I believe religious freedom is perhaps the original American dream – it is the reason that countless individuals and families have come to America from colonial times to the present. I strive to embody the ideal of religious tolerance and inclusion – of people of all faiths – in both my personal and professional life. If I am confirmed, I am committed to fully and fairly enforcing all laws within the Department's jurisdiction, including federal hate crimes statutes.

7. In recent months, our nation has experienced a disturbing rise in bias-motivated crimes. The Southern Poverty Law Center documented hate incidents in the weeks following the 2016 presidential election and found that more than 1000 bias-motivated incidents occurred in the month after the election, including more than 400 incidents motivated by anti-immigrant or anti-Muslim bias. The post-election spike followed an already disturbing trend. In November, the FBI released its annual hate crime incident report, which found that in 2015, hate crimes increased by 6 percent. Much of the increase came from attacks on Muslim Americans. Local police departments reported a 66 percent increase in hate crimes targeting the Muslim-American community in 2015.

In recent weeks, these terrible incidents of hate have continued. A mosque in Victoria, Texas was set on fire hours after President Trump signed his original Muslim ban executive order. More than 80 Jewish Community Centers and Jewish schools and institutions across the United States and Canada have received a total of more than 100 bomb threats in recent weeks. An Indian immigrant was shot and killed by a man who allegedly shouted “get out of my country.” And a Sikh American was shot in his driveway by an assailant who reportedly told him to “go back to your own country.”

In a 2014 speech to the Anti-Defamation League, FBI Director Comey said: Hate crimes are different from other crimes. They strike at the heart of one’s identity—they strike at our sense of self, our sense of belonging. The end result is loss—loss of trust, loss of dignity, and in the worst case, loss of life. Hate crimes impact not just individuals, but entire communities. When a family is attacked because of the color of their skin, it’s not just the family that feels violated, but every resident of that neighborhood. When a teenager is murdered because he is gay, the entire community feels a sense of helplessness and despair. And when innocent people are shot at random because of their religious beliefs—real or perceived—our nation is left at a loss.

- a. Do you agree with Director Comey’s statement?
- b. If you are confirmed, what steps would you take to reassure communities that have been impacted by these incidents of hate and are worried that the Trump Administration has not seriously addressed these threats?

RESPONSE: I agree that crimes motivated by prejudice have no place in American society. Hate crimes such as the ones Director Comey references are abhorrent and should not be tolerated. If confirmed, I will continue to make clear that hate crimes should not be tolerated, and I will be committed to fully and fairly enforcing federal hate crimes statutes.

8. Some say that the way to reduce gun violence is simply to bring more federal prosecutions against those who carry guns during the commission of crimes. While federal prosecutions of gun crimes may be important tools, they clearly are not enough on their own to solve the public health crisis of gun violence. For example, *The Chicago-Sun Times* reported that Baltimore had significantly more federal gun prosecutions than Chicago over the past five years (810 to 477), but Baltimore’s per-capita homicide rate is still higher than Chicago’s.

If confirmed, as the Associate Attorney General you will oversee the Office of Justice Programs, which encompasses the Office of Juvenile Justice and Delinquency Prevention, among other offices. You will also oversee the Community Oriented Policing Services (COPS) and the Office on Violence against Women.

- a. Do you agree that simply bringing more federal gun prosecutions isn't enough to stop gun violence?
- b. Do you agree that an effective strategy to reduce gun violence would benefit from Justice Department investments in violence prevention efforts like the COPS program, the programs administered under the Second Chance Act, and the programs administered by the Office of Juvenile Justice and Delinquency Prevention?
- c. Will you commit not to request cuts in Justice Department budget requests to violence prevention programs that are vitally important to Chicago including programs administered by the COPS Office, the Office of Juvenile Justice and Delinquency Prevention and the Office of Violence Against Women?

RESPONSE: I agree that a multi-faceted approach is critical to reducing gun violence and other crime. In addition to the investigative and prosecutorial work of the Department of Justice, I believe it is helpful to partner with state and local law enforcement through, among other components, the Office of Justice Programs, the Office of Juvenile Justice and Delinquency Prevention, the Community Oriented Policing Services, and the Office on Violence against Women. I am not yet familiar with those components' budgets, but if I am confirmed as Associate Attorney General, I commit to working with them to ensure they have the resources they need to carry out their important work.

9. In 2012, I chaired a hearing of the Subcommittee on the Constitution, Civil Rights, and Human Rights that examined hate crimes and the threat of domestic extremism. After the hearing, at my request, the FBI began tracking hate crimes against Arab Americans, Hindu Americans, and Sikh Americans, among others. This is a positive step, but if state and local law enforcement agencies do not report hate crimes, we cannot understand the full extent of the problem and what steps must be taken to address it.

In his speech to the Anti-Defamation League, Director Comey noted:

We need to do a better job of tracking and reporting hate crime to fully understand what is happening in our communities and how to stop it. There are jurisdictions that fail to report hate crime statistics. Other jurisdictions claim there were no hate crimes in their community—a fact that would be welcome if true. We must continue to impress upon our state and local counterparts in every jurisdiction the need to track and report hate crime. It is not something we can ignore or sweep under the rug.

- a. Do you agree with Director Comey?
- b. Will you commit that, if you are confirmed, you will take steps to ensure that the FBI and the Justice Department work together to improve hate crime reporting by state and local law enforcement?

RESPONSE: I do believe that it is important to understand the nature and extent of hate crimes in the United States. I have not yet had occasion to study the specific issue of hate crime reporting by state and local jurisdictions. If I am confirmed as Associate Attorney General, I will consult with the subject matter experts in the Department on this question.

10. Following a series of *New York Times*' reports, a 2016 investigative report by Senators Whitehouse, Warren, Boxer, Sanders, Brown, Merkley, Blumenthal, and Markey provided further information regarding how the Chamber of Commerce aggressively helped the tobacco industry fight antismoking laws, regulations, and policies, and systematically sought to undermine the Environmental Protection Agency's efforts to address climate change and carbon pollution.

- a. In your years of work on behalf of or in association with the Chamber of Commerce, did you ever participate in any efforts to oppose legislation or other types of government action seeking to regulate the use of tobacco products within the U.S. or internationally? Please detail your involvement, if any, and explain whether and how that shaped your views.
- b. In your years of work on behalf of or in association with the Chamber of Commerce, did you ever participate in any efforts to oppose legislation or other types of government action seeking to address climate change and carbon pollution? Please detail your involvement, if any, and explain whether and how that shaped your views.

RESPONSE: I was employed by the U.S. Chamber Litigation Center, an entity that is responsible for engaging in litigation in state and federal courts on behalf of the U.S. Chamber of Commerce. My role was to manage litigation. I was not employed by the policy offices of the Chamber of Commerce and did not engage in lobbying. I do not recall filing any briefs concerning tobacco regulation. With respect to environmental issues, I did manage litigation concerning regulations promulgated by the EPA and other agencies, including the cases listed in my questionnaire response.

11. As Associate Attorney General, you will oversee the play the Environment and Natural Resources Division, which plays a critical role in enforcing our nation's environmental laws. Taking a position in opposition to the overwhelming scientific consensus on climate change, Environmental Protection Agency Administrator Scott Pruitt stated in a recent interview:

I think that measuring with precision human activity on the climate is something very challenging to do and there's tremendous disagreement about the degree of impact, so no, I would not agree that it's a primary contributor to the global warming that we see.

By contrast, the EPA's own website (<https://www.epa.gov/climate-change-science/causes-climate-change>), as of March 13, 2017, stated:

Research indicates that natural causes do not explain most observed warming, especially warming since the mid-20th century. Rather, it is extremely likely that human activities have been the dominant cause of that warming.

Responding to Mr. Pruitt's assessment, the American Meteorological Society noted:

In reality, the world's seven billion people are causing climate to change and our emissions of carbon dioxide and other greenhouse gases are the primary cause. This is a conclusion based on the comprehensive assessment of scientific evidence. It is based on multiple independent lines of evidence that have been affirmed by thousands of independent scientists and numerous scientific institutions around the world.

- a. Do you agree with Mr. Pruitt's statement?
- b. Do you agree with the statement above from the EPA's website?
- c. Do you agree with the statement above from the American Meteorological Society?

RESPONSE: Congress has entrusted the Environmental Protection Agency and other agencies, not the Department of Justice, with making scientific and policy judgments such as these. I would defer to the agencies entrusted by Congress with making those judgments. If confirmed, I am committed to working with the subject matter experts in the Department who interface with the agencies that have developed the relevant substantive bodies of expertise to ensure full and fair enforcement of the environmental statutes the Department is charged with enforcing.

12. When asked by Senator Whitehouse during your confirmation hearing, you refused to answer whether there is a public interest in addressing climate change. You stated:

Senator, all I can tell you is that I think there is significant public interest in the Department of Justice enforcing the laws passed by Congress and in defending rules propagated by the agencies and trusted by Congress with making those policy judgments. That would be my job.

If confirmed, how do you plan to exercise your independent judgment in defending rules and policy judgments made by the Environmental Protection Agency or other agencies if those rules or policies are inconsistent with the overwhelming scientific consensus?

RESPONSE: Congress has entrusted the Environmental Protection Agency and other agencies, not the Department of Justice, with making scientific and policy judgments such as these. I would defer to the agencies entrusted by Congress with making those judgments. If confirmed, I am committed to working with the subject matter experts in the Department who interface with the agencies that have developed the relevant substantive bodies of expertise to ensure full and fair enforcement of the environmental statutes the Department is charged with enforcing.