

**United States Senator Mike Lee Questions  
for the Record**

Kristen Clarke

Nominee, Assistant Attorney General For the Civil Rights Division

1. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. It was championed by Senator Ted Kennedy and Senator Orrin Hatch to pass the Senate by a vote of 97-3 and to pass the House by a unanimous voice vote. President Bill Clinton proudly signed it into law in 1993. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit to oppose any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

**RESPONSE: Religious freedom is a founding freedom of the United States protected by the First Amendment of the Constitution and federal laws, including the Religious Freedom Restoration Act. If I were confirmed and asked to consider an amendment to a statute, including the Religious Freedom Restoration Act, I would carefully review all of the relevant legal and policy issues, and consult Justice Department leaders and career staff, to help formulate the Department's position.**

2. Do you believe speech alone—with no attendant conduct—should ever constitute a hate crime?

**RESPONSE: Freedom of speech is a fundamental value protected by the First Amendment. The Supreme Court has generally excluded from First Amendment protection only "well defined and narrowly limited classes of speech" such as "obscenity," "defamation," "fraud," "incitement," and "speech integral to criminal conduct." *United States v. Stevens*, 559 U.S. 460, 468-69 (2010) (citation omitted). If I am confirmed, my mandate will be to enforce the laws and Constitution of the United States. Enforcement decisions must be based on the facts and the law.**

3. You've described voter ID laws as a form of "subtler . . . equally pernicious discrimination," akin to the heinous voter suppression tactics of the Jim Crow era. Do you believe Rhode Island's voter ID law—which requires a photo ID or strict signature matching—constitutes a pernicious form of discrimination?

**RESPONSE: How the Voting Rights Act applies in any given jurisdiction is a fact-intensive inquiry. If confirmed, I will seek to ensure that the Justice Department fully and fairly enforces the law.**

4. Do you believe the 2021 Georgia law's provisions requiring voters to show a photo ID – either a driver's license or a free state-issued ID—or a document containing the voter's name and address (like a utility bill or bank statement) rises to the level of historical Jim Crow voter suppression laws?

**RESPONSE: How the Voting Rights Act applies in any given jurisdiction is a fact-intensive inquiry. If confirmed, I will seek to ensure that the Justice Department fully**

**and fairly enforces federal laws, including those protecting the right to vote and election security.**

5. The Voting Rights Act provides that “No person . . . shall intimidate, threaten, or coerce . . . any person for voting or attempting to vote.” 52 U.S.C. § 10307. Citing this statute, in 2009, the Department of Justice prosecuted members of the New Black Panther Party for Self Defense (“NBPP”) who stood outside of a Philadelphia polling place wearing military attire and brandishing a billy club. In your hearing testimony, you stated that you “espoused the opinion publicly” that the Justice Department should have dropped its prosecution of that case, and further explained that you thought the case was “weak.” Can you explain which aspect of that case was “weak?”

**RESPONSE: In my hearing testimony, I stated I “may” have espoused the view publicly that the claims in that case were “weak.” It appears I did not make such statements with respect to this case. To answer this question, I have reviewed statements I made under oath about this matter and a letter to the editor of the Washington Times I wrote in 2009, in which I stated the lawsuit was not one that I followed closely.**

6. Do you believe that evidence of voter suppression in a state in 1964—without present evidence of voter suppression in 2021—should be sufficient to justify a preclearance requirement for any election laws under Section 5 of the Voting Rights Act in 2021?

**RESPONSE: I am not aware of all the relevant facts concerning this hypothetical, and therefore am not in a position to comment.**

7. Do you believe *Shelby County v. Holder* was wrongly decided?

**RESPONSE: I was an attorney involved in this litigation. The Supreme Court’s decision did not vindicate my prior clients’ interests. That said, *Shelby County* is binding Supreme Court precedent which I will follow if confirmed.**

8. Was there any portion of the Department of Justice’s 2009 case against the NBPP that was not “weak?”

**RESPONSE: Please see my response to Question 5.**

9. Based on the conduct alleged in the Department of Justice’s case against the NBPP, do you believe it would have been appropriate to file a case for any reason against the individuals who stood outside the polling place brandishing a billy club?

**RESPONSE: As I testified at my hearing, voter intimidation is a real issue that should be addressed, and there are tools in the Voting Rights Act to help address voter intimidation. I was not at the Department of Justice at the time that case was considered so I do not know whether the law and the facts justified any other claims.**

10. In 2005, the Department of Justice prosecuted Ike Brown for vote denial, abridgment, and intimidation through various means. During your hearing testimony, you stated that “after I left the Justice Department, I expressed the view that the voter intimidation claim in [*United States v. Ike Brown*] was weak.” Did you agree—after you joined the NAACP’s Legal Defense Fund— with the Department of Justice’s decision to continue prosecuting the voter abridgment and denial aspects of that case?

**RESPONSE: As I testified at my hearing, I espoused the limited view that the voter intimidation claim in *United States v. Ike Brown* was weak, a position with which a federal court agreed. See *United States v. Brown*, 494 F. Supp. 2d 440 (S.D. Miss. 2007). I don’t recall having an opinion about other claims in that case.**

11. After joining the NAACP, did you believe the Department of Justice should have dropped its case against Ike Brown in its entirety?

**RESPONSE: Please see answer to Question 10.**

12. After joining the NAACP, did you privately or publicly espouse the opinion that the Department of Justice should have dropped its case against Ike Brown in its entirety?

**RESPONSE: Please see answer to Question 10.**

13. As Deputy Attorney General [sic], what will you do if the President takes a position that is contrary to the law or not in the interests of the United States?

**RESPONSE: Like President Biden and Attorney General Garland, I am committed to the independence of the Department of Justice and the fair and impartial administration of justice. If confirmed as Assistant Attorney General for the Civil Rights Division, I would advise the Attorney General and, when called upon, the President, based on my best independent judgment of what the facts and the law require.**

14. If confirmed, you may be asked to opine on the legality of a variety of proposed

Executive actions. In your view, is it the duty of the Department of Justice to give a favorable opinion of the legality of proposed action so long as reasonable arguments can be made in its defense? Or must the Department decide, *de novo*, whether those arguments are in fact correct?

**RESPONSE: It is the Department’s responsibility to advise on the legality and constitutionality of proposed executive actions with independence and with the interests of the United States in mind. It is the responsibility of Department attorneys to provide candid and well-informed advice to ensure that the priorities of the Administration are accomplished consistent with the Constitution and applicable law. If a proposed course of action does not meet that standard, the Department should counsel legally acceptable alternatives and, if there are none, must clearly state that.**

15. As a nominee for a position in the Executive branch, do you think there are any limits on the President’s use of prosecutorial discretion?

**RESPONSE: Exercising prosecutorial discretion is a necessary and important part of enforcing the law. The Executive Branch must ensure that limited resources are used appropriately because, as the Supreme Court has observed, an agency “generally cannot act against each technical violation of the statute it is charged with enforcing.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). The Executive Branch cannot decide that it will not enforce a law at all based on a policy disagreement.**

16. Is there a point where “prosecutorial discretion” simply becomes “executive fiat?”

**RESPONSE: Please see my response to Question 15.**

17. Do you agree that prosecutorial discretion should be the exception rather than the rule—i.e., that in the typical case covered by a law, it is the Executive’s duty to enforce that law?

**RESPONSE: The Department of Justice is responsible for enforcing the law. I will enforce the law without regard to politics or partisanship, just as I have done throughout my career, if confirmed to this position. From my experience as a trial attorney, criminal prosecutor, and Special Assistant United States Attorney at the Department of Justice, I understand that the appropriate exercise of prosecutorial discretion is an important part of that function. As the Supreme Court has recognized, an agency “generally cannot act against each technical violation of the statute it is charged with enforcing.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). As the Court further explained, when deciding whether to bring any enforcement action an “agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency’s overall policies, and, indeed, whether the agency has enough resources to undertake the action at all.” *Id.***

18. A number of states have enacted so-called “red flag laws” that authorize judges to issue orders for the seizure of otherwise lawfully owned firearms when the owner is found to be a danger to self or others. Do you support these red flag orders to

seize lawfully-owned firearms? If so, what due process protections should apply to the issuance of these orders? Should a judge be able to order firearm seizures in *ex parte* proceedings, before the respondent has had a chance to answer the allegations in the petition?

**RESPONSE: I do not know the specifics of this issue, but I believe that if someone is determined by a judge to be a danger to themselves or another human being, then it is important to minimize those risks. It is also important to consider due process and other federal rights.**

19. Late last year, ATF took steps to crack down on pistol braces, an accessory that was originally created to help disabled veterans safely and effectively handle large-framed handguns. Over a span of several years, BATFE deemed these items to be unregulated accessories, then appeared to backtrack on that decision, then reiterated its original position, then suddenly declared certain braced pistols to be regulated short-barreled rifles. The agency also issued highly-controversial draft guidance on pistol braces which it quickly withdrew after condemnation from the firearm industry and gun-owning public. Do you intend to reprise BATFE's efforts to regulate brace-equipped handguns? If so, how do you intend to accommodate the millions of law-abiding Americans who originally obtained these devices lawfully and in good faith and who have never used them for illegal purposes?

**RESPONSE: Because I am not currently at the Department, I am not familiar with current ATF proposals or pending technical decisions on particular firearm features or accessories. The Bureau of Alcohol, Tobacco, Firearms and Explosives will not be under my purview as Assistant Attorney General for the Civil Rights Division if I am confirmed.**

20. Do you support banning specific types of firearms?

**RESPONSE: I have not studied this issue in detail and do not have an opinion on it. As I understand the work of the Civil Rights Division, it is unlikely an issue like this would come before me if confirmed.**

21. Do you support banning large magazines?

**RESPONSE: I have not studied this issue in detail and do not have an opinion on it. As I understand the work of the Civil Rights Division, it is unlikely an issue like this would come before me if confirmed.**

22. Do you support holding firearms manufacturers liable for damage caused by people using their firearms to commit a crime?

**RESPONSE: I have not studied this issue in detail and do not have an opinion on it. As I understand the work of the Civil Rights Division, it is unlikely an issue like this would come before me if confirmed.**

23. Ms. Clarke, you stated that "Melanin endows Blacks with greater mental, physical

and spiritual abilities—something which cannot be measured based on Eurocentric standards.” Do you agree with that statement?

**RESPONSE: No. That part of the 1994 letter to the editor was meant as satire, and I explained at the time to a Crimson reporter and a fellow student that those views were not mine.**

24. Prior to your nomination for Assistant Attorney General for the Civil Rights Division, did you ever publicly explain that your statement that “Melanin endows Blacks with greater mental, physical and spiritual abilities” was meant to be satirical or facetious?

**RESPONSE: I explained to a Crimson reporter and a fellow student at the time that those were not my views.**

25. You mentioned in your hearing that there were contemporaneous writings noting that your op-ed was understood to be satirical. Please provide those writings for the record.

**RESPONSE: I was referring to this news article and letter from a Jewish student leader:**  
<https://www.thecrimson.com/article/1994/10/28/book-sparks-campus-debate-mental-physical/>  
<https://www.thecrimson.com/article/1994/11/7/call-for-retraction-not-professional-pi/>

26. If someone were to take your statement “Melanin endows Blacks with greater mental, physical and spiritual abilities” at face value, would that sentiment be racist in your view?

**RESPONSE: It was meant as an absurd comparison to the racist views in The Bell Curve, not to be taken at face value.**

27. Is racist speech acceptable as long as it’s sarcastic?

**RESPONSE: No.**

28. If racist speech is not acceptable—even if it’s sarcastic—then why have you refused to apologize for those statements and continued to defend them by saying they were meant to be sarcastic?

**RESPONSE: The 1994 letter to the editor was meant to hold a mirror up to absurd views of racial superiority, no matter what race they seek to define. I did not then and nor do I now believe that views that express discrimination aimed at any community have a place in our country.**

29. Ms. Clarke, [as my colleagues have mentioned], you invited Professor Anthony Martin to speak at Harvard. After other students criticized his comments regarding Jews, you defended him, saying his information was “based in indisputable fact.” At the event, Martin reportedly stated there was a “continuing Jewish onslaught against the entire Black nation.” Do you believe that statement was “based in indisputable fact?”

**RESPONSE: I do not.**

30. What did Mr. Martin say at the event in question that was “based in indisputable fact?”

**RESPONSE: My recollection of what I deemed “based in indisputable fact” was his stance on the harmful and racist assertions in The Bell Curve, which was why the Black Students Association accepted his offer to visit the campus in 1994.**

31. When you invited Professor Martin to speak, were you aware that, the year before, he’d published a book entitled “The Jewish Onslaught” in which he discusses an alleged—his words, not mine—“Jewish attack on Black progress?”

**RESPONSE: We accepted his offer to come refute The Bell Curve. I was not aware of his book or scholarship when he reached out.**

32. If you were aware of Mr. Martin’s book, why did you give a platform to someone who had published such an obviously anti-Semitic work?

**RESPONSE: I was not aware of the book when the Black Students Association accepted his offer to come and speak in 1994.**

33. In your hearing testimony, you said you “provided logistical support” for a conference while you were at Columbia Law School entitled “Race-ing Justice.” You also indicated that your involvement in the conference included “ma[king] sure people were fed, mail[ing] out invitations, [and] provid[ing] the agenda.” Did you engage in any other activities related to that conference?

**RESPONSE: During the conference in question, which took place in 1999, I was employed as a work study student and research assistant for the Institute for Research in African American Students at Columbia University. It was in that capacity that I provided logistical and other administrative support for the conference, working under the supervision and direction of the Institute’s Director.**

34. In preparation for the conference entitled “Race-ing Justice,” did you ever share, via email or otherwise, an article entitled “Mumia, ‘Lynch Law’ & Imperialism” by

Amiri Baraka which stated that “The Klan is now the Police, with Blue uniforms replacing the sheets and hoods. The corrupt racist Judges, are petty Klan administrators . . . ?” If yes, why?

**RESPONSE: I am aware that an email with my name listed as “Author” and which appears to be described in your question has recently circulated on social media. I have no independent recollection of that email and it is clear on its face the words quoted in your question were not mine.**

35. Did you serve on the editorial staff of a journal with Amiri Baraka, the author of “Mumia, ‘Lynch Law’ & Imperialism?”

**RESPONSE: No.**

36. Do you agree with the following assertion (from the article entitled “Mumia, ‘Lynch Law’ & Imperialism” by Amiri Baraka): “The Klan is now the Police, with Blue uniforms replacing the sheets and hoods. The corrupt racist Judges, are petty Klan administrators . . . ?”

**RESPONSE: No.**

37. Do you agree with any assertions made in the article entitled “Mumia, ‘Lynch Law’ & Imperialism” by Amiri Baraka?

**RESPONSE: I have no recollection of what was asserted in the article referenced in your question.**

38. In 2018, you signed a letter opposing the confirmation of Ryan Bounds, a nominee for the Ninth Circuit Court of Appeals. In that letter, you accused Bounds of making “insensitive statements” in a conservative newspaper while in college. You said that “[w]hile [Bounds] recently apologized for those comments, the timing of that apology suggests it is one of convenience rather than remorse, offered in a last-ditch effort to salvage his nomination and win the support of his home-state senators.” Do you believe that your own standard should be applied to you? Namely, that insensitive statements made in college are disqualifying even if you apologize for them?

**RESPONSE: The letter you appear to be referencing was sent by the Leadership Conference on Civil and Human Rights and signed by its then President and CEO, not me. In any event, I do not know which college statements you are referring to in this question. I was a student leader at Harvard College and in that role I spoke publicly on many issues of interest to the university community.**

39. Should your attempt to apologize for your statements made in college suggest that it is one of convenience rather than remorse?



**RESPONSE: Please see the response to Question 38.**

40. Why should we confirm you despite your “insensitive statements” and actions in college when you urged the Senate not to confirm Ryan Bounds for statements he made in college?

**RESPONSE: Please see the response to Question 38.**

41. Why did you sign a letter in 2019 defending Tamika Mallory, a woman who stated that “white Jews” “uphold white supremacy” and associated herself with Louis Farrakhan?

**RESPONSE: I joined a petition with thousands of civil rights lawyers, faith leaders, community leaders, and activists regarding Mallory’s work in connection with the Women’s March and her work on women’s rights, and gender equity. The petition makes clear that all signatories were “denouncing racism, antisemitism, sexism, violence, and bigotry in any form in our nation.”**

42. Do you think evidence of discriminatory views against minorities is relevant to a nominee’s fitness to run the Justice Department’s Civil Rights Division?

**RESPONSE: The Justice Department should seek individuals who will enforce the law without regard to politics or partisanship, and who are committed to the rule of law and to seeking equal justice under law. My record demonstrates that I do not hold discriminatory views toward any minority group, and that I have followed these principles throughout my legal career.**

43. The Biden Administration has stated its intention to pursue “equity.” Is there any difference between “equity” and “equality,” and if so, what is that difference?

**RESPONSE: At the start of his Administration President Biden defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” See E.O. No. 13985 (Jan. 20, 2021). I agree with Attorney General Garland that the President’s definition aligns with bedrock legal principles and is consistent with federal civil rights laws passed by Congress, including laws that prohibit discriminatory conduct.**

44. In order to achieve “equity,” is it ever necessary to discriminate against members of some groups in favor of others?

**RESPONSE: Equality means treating everyone the same. Equity means fairness and understanding that there are communities that may face particular historical and present-day barriers. Equity requires accounting for the fact that not everyone starts from the same footing, and works to address more longstanding barriers.**

45. If treating people equally before the law results in disparate outcomes, is it acceptable to discriminate against those with favorable outcomes before the law in order to correct that disparity?

**RESPONSE: Please see the response to Question 44.**

46. How do you define “systemic racism?”

**RESPONSE: Attorney General Garland testified that “there is discrimination and widespread disparate treatment of communities of color and other ethnic minorities in this country.” I agree with his view and believe that the Civil Rights Division’s role is to follow the facts and the law to identify if and when there are violations of our federal civil rights laws.**

47. How do you define “critical race theory?”

**RESPONSE: I am not an academic and I do not have a personal definition of critical race theory.**

48. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?

**RESPONSE: Please see answer to Question 47.**

49. Do you believe racism infects every aspect of our criminal justice system?

**RESPONSE: Attorney General Garland testified that “there is discrimination and widespread disparate treatment of communities of color and other ethnic minorities in this country.” I agree with his view and believe that the Civil Rights Division’s role is to follow the facts and the law to identify if and when there are violations of our federal civil rights laws or the Constitution.**

50. Do you believe theft and destruction of property are an appropriate response to systemic racism?

**RESPONSE: No. The First Amendment only protects the exercise of peaceful demonstration and protest. If confirmed as Assistant Attorney General I will work to enforce the law and protect communities from violence regardless of who engages in it.**

51. Do you believe theft and destruction of property are acceptable means for voicing dissent?

**RESPONSE: See response to question 50**

52. Do you believe that the Trump Administration—as a matter of policy and personnel—was racist?

**RESPONSE: I do not. As I said at my hearing, I generally use the terms “discrimination” and “discriminatory” when I talk about specific policies, or actions that produce discriminatory outcomes or effects.**

53. Congresswoman Ayanna Presley has said, in relation to criminal justice policy: “[w]e must now be every bit as intentional in legislating justice and equity, and that starts with embracing anti-racism as a central tenet of the policymaking process.” Do you plan to institute “anti-racist” policies in the divisions under your supervision at the Justice Department? If so, which policies do you plan to institute?

**RESPONSE: If confirmed, any policies that I may adopt in the Civil Rights Division will be consistent with the overall Department-wide policies determined by Attorney General Garland, and will be consistent with the law, regulations, and applicable court precedents.**

54. What current policies of the Justice Department are “racist?”

**RESPONSE: As I said at my hearing, I generally use the terms “discrimination” and “discriminatory” when I talk about specific policies, institutions, structures, or actions. There are no current policies of the Justice Department that I would consider racist.**

55. Do you believe that *Students for Fair Admissions v. Harvard*—in which several groups of Asian American students alleged that Harvard University’s admissions system unduly discriminated against Asian American students—constituted an unprecedented assault on efforts to promote racial diversity in higher education?

**RESPONSE: Following Attorney General Garland’s example, I believe it is prudent not to comment on the Department’s litigation decisions (including the amicus brief submitted by the Department in the matter referenced in this question) and positions unless and until I am confirmed by the Senate. If confirmed, I can be fully briefed on the relevant facts and applicable laws.**

56. Do you believe racial violence still lies within the DNA of our nation?

**RESPONSE: Attorney General Garland testified that “there is discrimination and widespread disparate treatment of communities of color and other ethnic minorities in this country.” I agree with his view and believe that the Civil Rights Division’s role is to follow the facts and the law to identify if and when there are violations of our federal civil rights laws.**

57. Do you believe that members of historically oppressed minority groups should be treated more favorably than those of other races in prosecutions and sentencing decisions to correct for the effects of systemic racism?

**RESPONSE: Please see the response to Question 56.**

58. Do you believe police officers should decide to arrest—or not arrest—people based on race or gender-based criteria?

**RESPONSE: Law enforcement officials should make arrests based on the facts and the law in compliance with the Constitution and federal civil rights laws.**

59. Do you believe it is ever justified for a police officer to use deadly force against an individual? If yes, when?

**RESPONSE: Yes. However, these are inquiries that must be made on a case-by-case basis, with a close examination of the facts and the law.**

60. Do you believe there is value in withholding judgment regarding specific instances of police misconduct until an officer is adjudicated to be guilty?

**RESPONSE: The Department has strict policies limiting public disclosure of the existence of or otherwise commenting about an ongoing investigation. See, e.g., Justice Manual 1-7.400. As a former federal prosecutor, I fully appreciate the importance of policies like this to protect the rights of those under investigation and commit to following them assiduously if confirmed.**

61. Why did you state that “Jussie Smollett was subjected to a racist and homophobic attack” well before the police investigation had concluded?

**RESPONSE: The facts as I understood them at the time of that tweet suggested that Mr. Smollett had been the victim of hate crime that should be investigated by the appropriate authorities. Like many others, I fell for Mr. Smollett’s hoax and in retrospect I regret having made that statement. Hoaxes distract attention away from the real incidents of hate crimes which are a growing threat in our country.**

62. If confirmed, how would you direct your department to handle a mandatory gun confiscation-type program that would result from banning so-called “assault weapons” like some of my colleagues are calling for and that has the support of the President?

**RESPONSE: If confirmed, I would direct the Division to take positions that are within its jurisdiction and supported by the Constitution and the law. As I understand it, firearms-related work would not fall within the scope of the Civil Rights Division’s work.**

63. Please state for the record your thoughts on the Second Amendment?

**RESPONSE: I have not worked on the Second Amendment during my career. *Heller* is established precedent that the Supreme Court has repeatedly reaffirmed. The Department of Justice’s litigating positions must be guided by existing law and precedent like *Heller*.**

64. Under the Obama Administration, Operation Chokepoint formalized financial

discrimination in the form of an effort by the Federal Deposit Insurance Corporation (FDIC) and Department of Justice (DOJ) to stop financial institutions from offering services to some regulated industries in an attempt to choke off banking services. This included federally licensed firearm retailers and other companies in the firearm and ammunition industry – some of the most heavily regulated businesses in the country. The Justice Department under President Trump committed to ending this controversial program. Will you commit that, if confirmed, this would also be the case under your leadership?

**RESPONSE: I am not familiar with the operation you reference. It does not appear from what you have described that this would be a program in the Civil Rights Division.**

65. Do you believe that as the AAG for the Civil Rights Division you have a duty to act in line with your moral code? If so, would you agree that it is part of your duty to ensure that the department under your care does not violate that code?

**RESPONSE: Throughout my career I have worked hard to follow the facts and the law, and I will bring that commitment to the Civil Rights Division if confirmed. I will ensure that the Division's work and enforcement matters are based solely on fair and careful application of the law to the facts, and will be guided by the recommendations of attorneys, federal law enforcement officials and other professionals in the Division in so doing.**

66. Along the same line, let's assume that someone acting as an agent of the Department of Justice takes actions which contradict your moral code. What responsibility do you feel you would owe for those actions?

**RESPONSE: Please see my response to question 65.**

67. For purposes of federal law, when does life begin?

**RESPONSE: In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court stated that the court "need not resolve" the question of when life begins. *Id.* at 159.**

68. Does the definition of when human life begins for purposes of federal law differ from the scientific definition of when human life begins?

**RESPONSE: In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court stated that the court "need not resolve" the question of when life begins. *Id.* at 159.**

69. At what point in human development does the United States have a compelling interest in protecting a human life?

**RESPONSE: In *Planned Parenthood v. Casey*, the Supreme Court held that states may regulate abortion prior to viability based on the state's interest in maternal health and potential life, provided those regulations did not impose and do not have "the purpose or**

effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.” 505 U.S. 833, 877 (1992).

70. Do you support laws penalizing fetal homicide?

**RESPONSE: If I am confirmed as Assistant Attorney General for the Civil Rights Division, my mandate will be to enforce the law, as I have done throughout my career.**

71. Do you support the Unborn Victims of Violence Act of 2004, which provides that a person guilty of killing a child in utero may be punished to the same extent as if they had killed the child’s mother, and that a person who intentionally kills a child in utero may be charged as a homicide (i.e., murder or manslaughter)?

**RESPONSE: If confirmed as Assistant Attorney General for the Civil Rights Division, my duty will be to enforce the Constitution and other federal laws consistent with Supreme Court precedent.**

72. Given that “homicide” requires the killing of an innocent human being, do you agree that in order to punish someone for violating this statute, the child in utero would have to be a human being?

**RESPONSE: If confirmed as Assistant Attorney General for the Civil Rights Division, my duty will be to enforce the Constitution and other federal laws consistent with Supreme Court precedent.**

73. Are there any circumstances which justify the killing of an innocent human being?

**RESPONSE: I am not aware of what circumstances you may be referring in your question. If confirmed as Assistant Attorney General for the Civil Rights Division, my duty will be to enforce the Constitution and other federal laws consistent with Supreme Court precedent.**

74. Do you support the Born Alive Infants Protection Act?

**RESPONSE: If confirmed as Assistant Attorney General for the Civil Rights Division, my duty will be to enforce the Constitution and other federal laws consistent with Supreme Court precedent.**

75. Relatedly, would you support any policy that would prohibit the killing of children who survive failed abortions outside the womb?

**RESPONSE: Please see my response to Question 74.**

76. Will you commit that the Department of Justice will not rely upon data or information compiled by the Southern Poverty Law Center considering these serious allegations raised against the organization of systemic sexual harassment, racial discrimination, and

domestic terrorism ties, as reported by the New York Times and others?

**RESPONSE: I am not familiar with the reporting you reference in your question, nor do I know whether and to what extent the Department may be relying on such data or information.**

77. In 2018, you said: “Jeff Sessions is launching a Religious Liberty Task Force to make it easier for people to use religion to mask their discriminatory goals.” How do you distinguish an individual’s legitimate exercise of their constitutional right to religious freedom from exercises that “mask” discriminatory goals?

**RESPONSE: The Justice Department is responsible for both ensuring freedom of religion and enforcing our antidiscrimination laws. These goals can be in tension but do not necessarily conflict. These are often complicated, fact-intensive questions. If confirmed, I would work to ensure the full and fair enforcement of the law, and to follow Supreme Court precedent.**

78. Do you believe a pastor, priest, rabbi, or imam who refuses to officiate a same-sex wedding is using religion to “mask” discrimination?

**RESPONSE: Please see answer to Question 77.**

79. Do you believe that a women’s shelter that denies entry to a person with a male body who claims to identify as a woman—knowing nothing else—should be denied federal funding?

**RESPONSE: I am not aware of all the relevant facts concerning this hypothetical, and therefore am not in a position to comment. As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. Transgender people can be discriminated against because their gender identity does not match the sex they were assigned at birth. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law.**

80. Do you believe the federal prison system should allow any person who identifies as a female to transfer to a women’s-only prison?

**RESPONSE: My understanding is that this issue is the topic of pending litigation. As a Department of Justice nominee, it would be inappropriate for me to comment unless and until I am confirmed by the Senate and can be fully briefed on the relevant facts and law.**

81. Do you believe schools run by mosques, synagogues, or churches should lose access

to federal funding if they choose not to employ individuals who disagree with the school's faith-based statement on sexuality or gender-identity?

**RESPONSE: If confirmed, I would seek to ensure that federal funding programs within my purview comply fully with applicable law.**

82. Should the Constitution protect the rights of religious organizations to hire or terminate employees based on their agreement or compliance with the school's religiously-based code of conduct?

**RESPONSE: Please see answer to question 77.**

83. Do you believe parents should be involved in the decision of whether to administer hormone blockers or other gender reassignment therapies to their minor child?

**RESPONSE: A person's gender identity is a personal matter. Each situation is unique, whether involving a minor or an adult, and any decision to receive medical treatment is similarly personal and particular to the individual. If I am confirmed, it will not be my mandate to proscribe rules for individual families and persons should address these very personal situations. I will enforce all federal laws within my purview, and work to ensure that every person is treated with respect and dignity and can live without fear, no matter who they are or who they love.**

84. In 2020, you wrote an article entitled "I Prosecuted Police Killings. Defund the Police—But Be Strategic." At the hearing, you stated that the article's title was chosen by the editor, and did not reflect your views. Separately, however, you stated that you ordinarily "defer" to editors on article titles. Were you asked whether you approved of the title before the article ran? Alternatively, did you communicate in advance that you approved of any title the editor chose (i.e., "defer[red]" to the editor's decision)?

**RESPONSE: I do not recall whether I spoke with the editor about a title for the piece. As I testified, I do not believe the title aligns well with what I wrote.**



**Senator Marsha Blackburn  
Questions for the Record  
Senate Judiciary Committee  
Kristen Clarke, Nominee to be Assistant Attorney General, Civil Rights Division**

1. What is your position on photo identification as a requirement for voter registration?

**RESPONSE: I agree with President Biden’s statement in his Executive Order on Promoting Access to Voting, E.O. No. 14019 (Mar. 7, 2021), in which he explained that it is the Administration’s policy “to promote and defend the right to vote for all Americans who are legally entitled to participate in elections.” Whether a photo identification requirement impacts the ability to vote, or has a discriminatory purpose, depends on the facts and circumstances in a particular state or jurisdiction. If confirmed, it will be my duty to fully and fairly enforce federal laws, including those protecting the right to vote and election security.**

2. When may a state require photo identification as a requirement for voter registration without running afoul of federal civil rights law?

**RESPONSE: Voter identification laws vary significantly from jurisdiction to jurisdiction and must be reviewed on a case-by-case basis. Some laws may have an unconstitutional and discriminatory purpose while others may not. The role of the Justice Department is to enforce federal law based on the facts of each case, and if confirmed, I would do just that.**

3. Is it a violation of any federal civil rights law to require photo identification to pick up event tickets at the will-call ticket window?

**RESPONSE: There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.**

4. Is it a violation of any federal civil rights law to require photo identification to board a plane?

**RESPONSE: There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.**

5. Is it a violation of any federal civil rights law to require photo identification before a passenger is allowed to cross through airport security?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

6. Is it a violation of any federal civil rights law to require photo identification to pick up a prescription?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

7. Is it a violation of any federal civil rights law to require photo identification to purchase a gun?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. For example, most firearm sales require the transferor of a firearm to verify the identity of a purchaser by reviewing an identity document. *See* 8 U.S.C. § 922(t)(1)(C); 18 U.S.C. § 1028(d)(3). Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

8. Is it a violation of any federal civil rights law to require photo identification to purchase alcohol?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

9. Is it a violation of any federal civil rights law to require photo identification to purchase cigarettes?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

10. Is it a violation of any federal civil rights law to require photo identification to open a bank account?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. For example, banks that are required to have anti-money laundering compliance programs are required to have customer identification programs, which require them to develop procedures to “form a reasonable belief that it knows the true identity of each customer.” 31 C.F.R. § 1020.220(a)(1, 2). Banks can rely on certain identity documents to fulfill this requirement. *See* 31 U.S.C. § 1020.220(a)(2)(ii)(A)(1). Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

11. Is it a violation of any federal civil rights law to require photo identification to apply for food stamps?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

12. Is it a violation of any federal civil rights law to require photo identification to apply for Medicaid?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. For example, the Medicaid program requires applicants to demonstrate their citizenship/immigration status. *See* 42 U.S.C. § 1396b(X)(1, 3). Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

13. Is it a violation of any federal civil rights law to require photo identification to apply for Social Security benefits?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

14. Is it a violation of any federal civil rights law to require photo identification to apply for federal unemployment benefits?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined

**on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.**

15. Is it a violation of any federal civil rights law to require photo identification to rent a house?

**RESPONSE: There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.**

16. Is it a violation of any federal civil rights law to require photo identification to buy a house?

**RESPONSE: There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.**

17. Is it a violation of any federal civil rights law to require photo identification to apply for a mortgage?

**RESPONSE: There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.**

18. Is it a violation of any federal civil rights law to require photo identification to buy a car?

**RESPONSE: There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.**

19. Is it a violation of any federal civil rights law to require photo identification to rent a car?

**RESPONSE: There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.**

20. Is it a violation of any federal civil rights law to require photo identification to register a car?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

21. Is it a violation of any federal civil rights law to require photo identification to receive a marriage certificate?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

22. Is it a violation of any federal civil rights law to require photo identification to rent a hotel room?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

23. Is it a violation of any federal civil rights law to require photo identification to visit a casino?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

24. Is it a violation of any federal civil rights law to require photo identification to enlist in the military?

**RESPONSE:** There are many valid reasons to adopt a law or policy requiring a photo ID. Whether a particular law or policy violates federal civil rights laws can only be determined on a case-by-case basis after a review of the facts and the law, including but not limited to the reason the identification requirement was adopted, the nature of the right at stake, and whether it is consistently applied to all people.

25. Why did you tweet that “vote fraud is a myth and a LIE”? Tweet is located at <https://twitter.com/KristenClarkeJD/status/1054179058601345025>.

**RESPONSE:** In my experience running a non-partisan Election Protection hotline at the Lawyers’ Committee for Civil Rights Under Law, I have found credible allegations of vote fraud to be exceedingly rare. Nevertheless, the Department of Justice should take seriously credible allegations of election crimes, including fraud. Such cases are typically prosecuted by the Criminal Division, which is under the purview of the Deputy Attorney General, and I would defer to the Deputy Attorney General in these matters.

26. Why did you tweet that *Masterpiece Cakeshop* Supreme Court decision “devastating” and “gravely unfortunate”? Tweet is located at <https://twitter.com/KristenClarkeJD/status/1003642893662334976>.

**RESPONSE:** I stated at the time that I thought the Supreme Court decision in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), missed an opportunity to discourage discrimination against people on the basis of their LGBT status. The Court’s decision recognized the authority of states to “protect the rights and dignity of gay persons who are, or wish to be, married but who face discrimination when they seek goods or services,” and also that all people have the right to the free exercise of religion. *Id.* at 1723. If confirmed, I will work with other Department leaders and with career staff to follow and enforce the law and Supreme Court precedents like *Masterpiece Cakeshop*.

27. Why did you tweet that the religious liberty organization Alliance Defending Freedom is an “anti-LGBTQ hate-group”? Tweet is located at <https://twitter.com/KristenClarkeJD/status/1072168061581623301>.

**RESPONSE:** I have used my platform as the leader of a national civil rights organization to bring attention to issues that I deem important to achieving equal justice for all people. In retrospect, I regret the tone I occasionally took. I welcome the opportunity, as President Biden and Judge Garland have emphasized, to turn down the volume and lower the temperature.

28. Did you ever write that “some parts of police budgets ... should be eliminated immediately, like the federal ‘1033 program’”?

**RESPONSE:** The statement you reference was in an op-ed I wrote in *Newsweek* in June 2020. I wrote that article to make clear that I do not support defunding or abolishing the police. As a former federal prosecutor and state law enforcement official, and in my work at the Lawyers’ Committee for Civil Rights Under Law, I have worked with the police throughout my career to successfully prosecute federal and state civil rights cases, and to develop policies to improve police practices. I am proud to have endorsements or the support of law enforcement organizations or representatives of the Major Cities Chiefs Association, National Association of Police Organizations, International Association of Chiefs of Police, National Organization of Black Law Enforcement Executives, National

**Association of Women Law Enforcement Executives, Hispanic American Police Command Officers Association, Women in Federal Law Enforcement, and over 40 current and former police chiefs and sheriffs from across the country. I am also proud to be supported by numerous crime victim advocates and domestic violence organizations, as well as numerous former Justice Department officials and current and former State Attorneys General.**

**Through my work, I appreciate the challenges today's law enforcement officers face. I support finding strategies to ensure that law enforcement can carry out their jobs more safely and effectively, and channeling resources to emotional health treatment and other severely under-resourced areas. Furthermore, I support President Biden's commitment of \$300 million to COPS to help ensure that police have more resources to do their jobs. With more resources, we can work to ensure that they can carry out their roles more effectively.**

29. When did you write that "some parts of police budgets ... should be eliminated immediately, like the federal '1033 program'"?

**RESPONSE: Please see the response to Question 28.**

30. Why did you write that "some parts of police budgets ... should be eliminated immediately, like the federal '1033 program'"?

**RESPONSE: Please see the response to Question 28.**

31. Should federal, state and local law enforcement be denied access to riot gear available under the federal 1033 program?

**RESPONSE: Please see the response to Question 28.**

32. Why did you tweet "it's time to terminate money bail"? Tweet is located at <https://twitter.com/KristenClarkeJD/status/1064970516417691648>.

**RESPONSE: I wrote that tweet in conjunction with a lawsuit filed by the Lawyers' Committee alleging certain for-profit bail bonds companies in the Baltimore area were operating without state licenses and collecting on illegal contracts. In the State of Maryland, companies that are unlicensed may neither enter into bail bond contracts nor engage in any bonding activities.**

33. Have any individuals been murdered because a criminal was released without posting cash bail, as a result of the elimination of the money bail system?

**RESPONSE: I am not aware of any cases where a person has been murdered by a person released without posting cash bail as a result of the elimination of a money bail system.**

34. Do you believe money bail makes cities safer or more dangerous?

**RESPONSE:** The Lawyers' Committee has reviewed money bail practices of certain jurisdictions across the country, and has concluded that people of color and the poor disproportionately face the threat of incarceration as a result of pretrial practices that rely on money bail rather than individualized bail determinations. As a general matter, I do not believe that discriminatory practices promote the interests of justice or make communities safer.

35. What is the status of New York's program to end money bail?

**RESPONSE:** I understand that both New York City and New York State have engaged in years-long discussion around bail reform. However, I am not familiar with the scope of the current program or current reform efforts.

36. What was New York City's murder rate in 2020?

**RESPONSE:** The New York City Police Department reports there were 462 murders in New York City in 2020. See <https://www1.nyc.gov/site/nypd/news/p0106a/overall-crime-new-york-city-reaches-record-low-2020>.

37. Have you ever organized any events featuring any anti-Semitic speakers?

**RESPONSE:** I would never intentionally promote the views of an anti-Semite. Anti-Semitism is a hateful form of bigotry. I believe you are referring to when the Harvard Black Students Association, of which I served as president in 1994, accepted the offer from Wellesley College Professor Tony Martin to speak at the Harvard campus about The Bell Curve. I have publicly condemned anti-Semitism in any form, and have said I would not give someone like Professor Martin a platform again. I have worked throughout my professional career to combat religious discrimination and advance religious liberty.

38. How do you know Tamika Mallory?

**RESPONSE:** I have followed her advocacy work to promote the Women's March, gender equity, and to advance police reform.

39. Are you aware of any anti-Semitic statements Tamika Mallory has made?

**RESPONSE:** I am aware of allegations reported in the news. I denounce antisemitism.

40. What letters have you written in support of Tamika Mallory and what did those letters say?

**RESPONSE:** I have not written any letters of support of Mallory. I joined a petition with thousands of civil rights lawyers, faith leaders, community leaders, and activists regarding Mallory's work in connection with the Women's March and her work on women's rights,



**and gender equity. The petition makes clear that all signatories were “denouncing racism, antisemitism, sexism, violence, and bigotry in any form in our nation.”**

41. What years did you work for New York Attorney General Eric Schneiderman?

**RESPONSE: September 2011 to December 2015.**

42. What were your duties as Chief of the Civil Rights Bureau in the New York State Attorney General’s Office?

**RESPONSE: As Chief of the Civil Rights Bureau at the New York State Attorney General’s Office, I led and coordinated civil rights enforcement in the State of New York using federal, state, and local civil rights laws, such as the Voting Rights Act of 1965, the Fair Housing Act, Title VI, Title VII, the Americans with Disabilities Act, New York State Human Rights Law, and other landmark laws. I helped to direct investigations and prosecute discrimination cases on the basis of race, color, national origin, sex, marital status, sexual orientation, gender identity, religion, source of income and disability status. I worked with the New York State Police, New York State Sheriffs and other law enforcement officials in advancing the office’s work. I also led a Religious Rights Unit which worked to promote religious liberty ad combat religious discrimination.**

43. As Chief of the Civil Rights Bureau in the New York State Attorney General’s Office, how often on a daily, weekly or monthly basis did you interact with New York Attorney General Schneiderman?

**RESPONSE: I interacted with former Attorney General Schneiderman on a regular basis as my duties required. During my tenure at the Office of the State Attorney General, he was not my direct supervisor.**

44. In 2018, four women came forward with accusations that New York Attorney General Schneiderman physically and emotionally abused them. Did you ever witness Mr. Schneiderman commit misconduct against his employees during your time as Chief of the Civil Rights Bureau?

**RESPONSE: No.**

45. In 2018, four women came forward with accusations that New York Attorney General Schneiderman physically and emotionally abused them. Did you ever witness Mr. Schneiderman commit the abuse that was alleged against these four individuals during your time as Chief of the Civil Rights Bureau?

**RESPONSE: No.**

46. Did you ever discourage any women from coming forward with accusations that New York Attorney General Schneiderman physically and emotionally abused them?

**RESPONSE: No.**

47. Did you ever discredit any women from coming forward with accusations that New York Attorney General Schneiderman physically and emotionally abused them?

**RESPONSE: No.**

48. Did you ever conceal any allegations that New York Attorney General Schneiderman physically or emotionally abused his employees?

**RESPONSE: No.**

49. Do you still stand by your tweet in support of New York Attorney General Schneiderman, stating “Thanks NY @AGSchneiderman for standing up for women and safe workplaces.” Tweet is located here:

<https://twitter.com/KristenClarkeJD/status/922656991499169792>.

**RESPONSE: The New York State Attorney General Office’s lawsuit against The Weinstein Company, Harvey Weinstein, and Robert Weinstein, was settled as part of an agreement that obtained \$19 million for women who experienced sexual misconduct and workplace harassment. I believed at the time of that tweet and I believe now that the Office of the State Attorney General, including its prosecutors and state investigators, was right to follow the facts and law in this matter.**

50. Multiple women who worked for New York Governor Andrew Cuomo have come forward with accusations of harassment and inappropriate behavior. Given such accusations, should Governor Cuomo resign?

**RESPONSE: Generally speaking, I believe credible allegations of harassment and inappropriate behavior should be investigated by the appropriate authorities. I have not formed an opinion about the allegations against Governor Cuomo and understand that these allegations are currently being investigated by the Office of the State Attorney General.**

**Senator Cotton: Nomination of Kristen M. Clarke to be an  
Assistant Attorney General of the United States Questions for the Record**  
Submitted April 21, 2021

QUESTIONS FROM SENATOR COTTON

1. Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?

**RESPONSE: No.**

2. Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?

**RESPONSE: No.**

3. You stated during your hearing that you were “proud” to have the endorsement of the National Association of Police Organizations for your nomination. Please provide a copy of that endorsement letter or any press releases issued by the National Association of Police Organizations announcing their endorsement of your nomination.

**RESPONSE: Upon reviewing my hearing transcript I observed that I incorrectly stated that the National Association of Police Organizations (NAPO) was among the law enforcement groups that have endorsed my nomination to be Assistant Attorney General for the Civil Rights Division. I have spoken with NAPO leadership and NAPO President Bill Johnson several times since my nomination, and we have committed to maintaining open lines of communication and honest and timely dialogue on the shared issues we face. I appreciate that in NAPO’s January 22, 2021, newsletter, the organization stated that it looked forward to working with me, if I am confirmed, “to protect the rights of officers and ensure our state and local law enforcement have the support and resources necessary to serve and protect our communities.” In addition to this organization statement, NAPO Executive Director Bill Johnson has stated that “[w]e both realize that we may not always agree with each other on every issue, but at the same time I believe we share a common goal of fair, effective, ethical and safe law enforcement.” <https://www.ny1.com/nyc/all-boroughs/news/2021/03/11/police-groups-endorse-kristen-clarke-civil-rights>**

**I am pleased to reaffirm here my commitment to open lines of communication with NAPO and all other law enforcement organizations.**

4. Approximately 20,000 people were murdered in the United States in 2020. That represents a 25% increase over 2019, and the highest number of overall murders since the 1990s. According to the FBI, approximately two out of every five murders in the United States are never even cleared by an arrest. That means that, in 2020 alone, the families of approximately

8,000 murder victims will never get justice for their murdered loved ones. Would it be better for us to find, arrest, prosecute, and incarcerate those 8,000 murderers, or to let them go free?

**RESPONSE: None of us wants murderers to go free. The Justice Department plays an important role in prosecuting crimes and protecting victims of crime, including and especially victims of violent crime. If I am confirmed as Assistant Attorney General, I will vigorously enforce the laws of the United States that are within the Civil Rights Division's jurisdiction.**

5. Does the Constitution allow the federal government to treat any Americans differently than others based on the color of their skin?

**RESPONSE: If I am confirmed as Assistant Attorney General of the Civil Rights Division, I will work to ensure the Division abides by the laws and Constitution, including those laws and constitutional provisions that concern unlawful discrimination on the basis of race. What the Constitution allows in a particular case depends on the constitutional provision, facts, and circumstances.**

6. Are civil rights guaranteed to all Americans, or only specific sub-sets of Americans?

**RESPONSE: Civil rights are guaranteed to all Americans.**

7. Is the right to due process a civil right?

**RESPONSE: The Due Process Clause of the Fourteenth Amendment states "nor shall any State deprive any person of life, liberty, or property, without due process of law." The right to due process is a constitutional right.**

8. Is the right to a fair and impartial trial for those accused of committing a crime a civil right?

**RESPONSE: The Sixth Amendment guarantees, among other things, that "the accused shall enjoy the right to a speedy and public trial, by an impartial jury...."**

9. Is the right to peaceably assemble and protest a civil right?

**RESPONSE: The First Amendment guarantees the right to assemble in peaceful demonstration and protest.**

10. Is rioting a civil right?

**RESPONSE: The First Amendment protects the exercise of peaceful demonstration and protest.**

11. Is looting a civil right?

**RESPONSE: The First Amendment protects speech and other expressive activities. It does not protect property damage.**

12. Is religious liberty a civil right?

**RESPONSE: The First Amendment states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”**

13. Is the right to keep and bear arms under the Second Amendment a civil right?

**RESPONSE: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects “an individual right to keep and bear arms.” *Id.* at 595.**

14. Do illegal aliens have a civil right to come to the United States?

**RESPONSE: Immigration laws govern whether and to what extent immigrants may enter and remain in the United States. However, criminal enforcement of immigration-related offenses and deportations will not be within my direct purview. If confirmed, it will be my mandate to follow and enforce all federal laws related to this issue.**

15. Should any eligible voter in the United States ever face voting discrimination based on their race?

**RESPONSE: No.**

16. Should the Department of Justice enforce voting rights laws whenever there is racial discrimination, or only when the discrimination targets voters of a particular racial group?

**RESPONSE: No eligible voter should face discrimination based on their race, regardless of the racial group(s) with which they identify. Discrimination has no place in our society. President Biden has made clear that, under his Administration, the federal government should work to affirmatively advance civil rights. I share his commitment.**

17. Are you proud of your work at the “Lawyers’ Committee for Civil Rights Under Law”?

**RESPONSE: Yes, and I am proud and grateful for the thousands of volunteer lawyers, both Republican and Democratic, in law firms around the country who have worked hard since the Lawyers’ Committee’s founding in 1963 to vindicate rights guaranteed by the United States Constitution through their pro bono support.**

18. In your current role at the “Lawyers’ Committee for Civil Rights Under Law,” do you represent that organization to the public?

**RESPONSE: Since becoming President and Executive Director of the organization in**

**2016, I have frequently represented the Lawyers' Committee to the public. I did step back from an active role at the Lawyers' Committee after my nomination was announced by the then-President-elect.**

19. Is part of your current role at the "Lawyers' Committee for Civil Rights Under Law" to make public statements on behalf of the organization?

**RESPONSE: Since becoming President of the organization in 2016, I have frequently spoken to the public on behalf of the Lawyers' Committee. I did step back from an active role at the Lawyers' Committee after my nomination was announced by the then-President-elect.**

20. You have had an active social media presence for years. If part of your current role at the "Lawyers' Committee for Civil Rights Under Law" is to make public statements on behalf of the organization, are posts on those social media networks sometimes part of your work?

**RESPONSE: Yes, these statements are sometimes part of my work. When I speak on behalf of the organization, this can be in a variety of forms, including social media statements made via the Lawyers' Committee account and my work-related account.**

21. Please identify any positions for which you have advocated on behalf of the "Lawyers' Committee for Civil Rights Under Law" with which you do not personally agree.

**RESPONSE: I have approached my work at the Lawyers' Committee for Civil Rights Under Law with a commitment to ensuring the rule of law and equal justice under law. Our cases are undertaken only after careful examination of the facts and relevant law.**

22. You have made some highly inflammatory posts on social media, including baseless, personal attacks against me and other senators. In March, after a news article pointed out that you had called Senator Murkowski "disgraceful" and accused Senator Manchin of "hollow words" when he praised Martin Luther King, you set your Twitter account to "private," cutting off the public and the news media from being able to review your past public statements. I understand that you have since given select members of the Senate access to continue viewing your past public statements, but you have cut off media and public access. Why did you change your Twitter account to "private" following the publication of that article?

**RESPONSE: In March 2021, following a media story that inaccurately portrayed my record, I received death threats through my public Twitter account. In addition to flagging those messages for Twitter as possible violations of the platform's terms of service, and after consultation with the Department of Justice, I decided to change my Twitter account to private for the safety of me and my family. To ensure members of the Senate Judiciary Committee still could review my social media posts in preparation for my confirmation**

**hearing, I offered to grant access to my account to majority and minority committee staff. I complied with these requests diligently. My understanding is staff on both sides took up that offer.**

23. You have made some highly inflammatory posts on social media, including baseless, personal attacks against me and other senators. In March, after a news article pointed out that you had called Senator Murkowski “disgraceful” and accused Senator Manchin of “hollow words” when he praised Martin Luther King, you set your Twitter account to “private,” cutting off the public and the news media from being able to review your past public statements. I understand that you have since given select members of the Senate access to continue viewing your past public statements, but you have cut off media and public access. Did anyone in the Biden administration or the Biden transition team advise you to set your Twitter account to “private”? Please identify any such individual, along with when they advised you to set your Twitter account to “private.”

**RESPONSE: Please see response to Question 22.**

24. You have made some highly inflammatory posts on social media, including baseless, personal attacks against me and other senators. In March, after a news article pointed out that you had called Senator Murkowski “disgraceful” and accused Senator Manchin of “hollow words” when he praised Martin Luther King, Jr., you set your Twitter account to “private,” cutting off the public and the news media from being able to review your past public statements. I understand that you have since given select members of the Senate access to continue viewing your past public statements, but you have cut off media and public access. Do you still believe that Senator Murkowski is “disgraceful”?

**RESPONSE: I have used my platform as the leader of a national civil rights organization to bring attention to legal and policy issues that I deem important to achieving equal justice for all. In retrospect, I regret the tone I occasionally took. I welcome the opportunity, as President Biden and Judge Garland have emphasized, to turn down the volume and lower the temperature.**

25. You have made some highly inflammatory posts on social media, including baseless, personal attacks against me and other senators. In March, after a news article pointed out that you had called Senator Murkowski “disgraceful” and accused Senator Manchin of “hollow words” when he praised Martin Luther King, you set your Twitter account to “private,” cutting off the public and the news media from being able to review your past public statements. I understand that you have since given select members of the Senate access to continue viewing your past public statements, but you have cut off media and public access. Do you still believe that Senator Manchin’s praise for Martin Luther King, Jr. was nothing more than “hollow words”?

**RESPONSE: Please see response to Question 24.**

26. On August 28, 2020, you tweeted that more than 200 judges appointed by President Trump and confirmed by the United States Senate are “primarily white male extremists.” Which judges, specifically, were you accusing of being “white male extremists”?

**RESPONSE: Please see response to Question 24.**

27. During your hearing, you were asked about your 2020 op-ed in *Newsweek*, where you advocated for defunding the police. That op-ed was entitled, “*I Prosecuted Police Killings. Defund the Police—But Be Strategic.*” When asked about it during your hearing, you responded that you did not actually mean “defund the police” when you said “defundthe police.” You further claimed that the title of the op-ed was not your own, but “a poor title chosen by the editor.” When you submitted the piece for consideration by *Newsweek*, what title did you suggest?

**RESPONSE: I do not recall whether I spoke with the editor about a title for the piece. I have developed the practice of being deferential to editors on title selection. As I testified, I do not believe the title aligns well with what I wrote.**

28. During your hearing, you were asked about your 2020 op-ed in *Newsweek*, where you advocated for defunding the police. That op-ed was entitled, “*I Prosecuted Police Killings. Defund the Police—But Be Strategic.*” When asked about it during your hearing, you responded that you did not actually mean “defund the police” when you said “defundthe police.” You further claimed that the title of the op-ed was not your own, but “a poor title chosen by the editor.” When the editor chose that title, did you object or suggest alternatives?

**RESPONSE: Please see response to Question 27.**

29. During your hearing, you were asked about your 2020 op-ed in *Newsweek*, where you advocated for defunding the police. That op-ed was entitled, “*I Prosecuted Police Killings. Defund the Police—But Be Strategic.*” When asked about it during your hearing, you responded that you did not actually mean “defund the police” when you said “defundthe police.” You further claimed that the op-ed was written “without the power of the purse string,” suggesting that your position might be different if you actually had the power to defund the police. What other positions that you have taken throughout the past five years are ones that you would no longer hold if given the power to enact those positions?

**RESPONSE: I do not support defunding the police. As a former federal prosecutor and state law enforcement official, and in my work at the Lawyers’ Committee for Civil Rights**



**Under Law, I have worked with the police throughout my career to successfully prosecute federal and state civil rights cases, and to develop policies to improve police practices. I am proud to have endorsements or the support of law enforcement organizations and representatives of the Major Cities Chiefs Association, National Association of Police Organizations, International Association of Chiefs of Police, National Organization of Black Law Enforcement Executives, National Association of Women Law Enforcement Executives, Hispanic American Police Command Officers Association, and over 40 police chiefs from across the country.**

**Through my work, I appreciate the challenges today's law enforcement officers face. I support finding strategies to ensure that law enforcement can carry out their jobs more safely and effectively and channeling resources to emotional health treatment and other severely under-resourced areas. Furthermore, I support President Biden's commitment to allocate \$300 million to COPS to help ensure that police have more resources to do their jobs. With more resources, we can work to ensure that they can carry out their roles more effectively while also channeling new resources to areas that can help address some of the burdens that law enforcement face.**

30. During your hearing, you were asked about your 2020 op-ed in *Newsweek*, where you advocated for defunding the police. That op-ed was entitled, "*I Prosecuted Police Killings. Defund the Police—But Be Strategic.*" When asked about it during your hearing, you responded that you did not actually mean "defund the police" when you said "defund the police." In the piece, you wrote the phrase, "We must invest less in police" three separate times. Do you still believe that we "must invest less in police" today? If not, when did your position change?

**RESPONSE: See response to Question 29**

31. During your hearing, you were asked about your 2020 op-ed in *Newsweek*, where you advocated for defunding the police. That op-ed was entitled, "*I Prosecuted Police Killings. Defund the Police—But Be Strategic.*" When asked about it during your hearing, you responded that you did not actually mean "defund the police" when you said "defund the police." Your op-ed referred to riot gear as "weapons of war." Do you believe that police officers facing down violent mobs and rioters should not be allowed to use riot gear such as helmets and shields?

**RESPONSE: See response to Question 29**

32. During your hearing, you were asked about your involvement in organizing a conference that celebrated cop-killers such as Mumia Abu-Jamal. You responded that you were merely providing "logistical support" for the conference and that you worked on a "range" of conferences and events. Before this event, were you aware of the positions that the speakers you were inviting would present?

**RESPONSE:** The conference you reference, which took place in 1999, was focused broadly on criminal justice issues and sponsored by the Institute for Research in African American Students at Columbia University, where I was employed as a work study student and research assistant. I am sure I was generally aware of the topics that would be addressed at the conference through my role as a work study student, but I cannot recall today what I may have known about the specific positions that each speaker would present at the conference.

33. During your hearing, you were asked about your involvement in organizing a conference that celebrated cop-killers such as Mumia Abu-Jamal. You responded that you were merely providing “logistical support” for the conference and that you worked on a “range” of conferences and events. Did you express any disagreement with the speakers at the conference calling convicted killers “political prisoners”?

**RESPONSE:** The conference you reference, which took place in 1999, was sponsored by the Institute for Research in African American Students at Columbia University, where I was employed as a work study student and research assistant. Dr. Manning Marable, in his capacity as Director of the Institute, was the conference organizer. I did not have a speaking or other substantive role at the conference.

34. During your hearing, you were asked about your involvement in organizing a conference that celebrated cop-killers such as Mumia Abu-Jamal. You responded that you were merely providing “logistical support” for the conference and that you worked on a “range” of conferences and events. The news reports about this conference also mention a “march” on behalf of Mumia Abu-Jamal that was scheduled to take place the day after the conference. Did you attend that event?

**RESPONSE:** No.

35. During your hearing, you were asked by Senator Cornyn about a deeply offensive piece that you wrote while at Harvard, in which you listed racist theories that African Americans are genetically superior to other races, and you wrote in the piece that you included those theories to “assist [students] in [their] search for truth regarding the genetic differences between Blacks and whites.” You claimed, in response to Senator Cornyn’s question, that you had always meant that piece as “satire,” not as a serious post. You also claimed that “contemporaneous” reporting “from that time, from that day” make that clear. Please provide a copy of each contemporaneous article that you claim shows you meant the piece as “satire.”

**RESPONSE:** Please see articles below:

<https://www.thecrimson.com/article/1994/10/28/book-sparks-campus-debate-pmental->

[physical/](#)

<https://www.thecrimson.com/article/1994/11/7/call-for-retraction-not-professional-pi/>

36. During your hearing, you were asked by Senator Cornyn about a deeply offensive piece that you wrote while at Harvard, in which you listed racist theories that African Americans are genetically superior to other races, and you wrote in the piece that you included those theories to “assist [students] in [their] search for truth regarding the genetic differences between Blacks and whites.” You claimed, in response to Senator Cornyn’s question, that you had always meant that piece as “satire,” not as a serious post. You also claimed that “contemporaneous” reporting “from that time, from that day” make that clear. Yet, just a few weeks after writing that initial piece, in response to outcry on Harvard’s campus about the initial piece and calls to retract it, you published another piece on November 8, 1994. In that November 8 piece, you wrote, “I refuse to retract my statements nor bow to the paternalistic style of journalism that The Crimson endorses.” If your original piece was “satire,” why did you “refuse to retract” it?

**RESPONSE: My letter to the editor was meant to hold a mirror up to absurd views of racial superiority, no matter what race they seek to define. The letter sought to condemn The Crimson’s failure to attack and denounce the racist theory underlying The Bell Curve.**

37. During your hearing, you were asked by Senator Cornyn about a deeply offensive piece that you wrote while at Harvard, in which you listed racist theories that African Americans are genetically superior to other races, and you wrote in the piece that you included those theories to “assist [students] in [their] search for truth regarding the genetic differences between Blacks and whites.” You claimed, in response to Senator Cornyn’s question, that you had always meant that piece as “satire,” not as a serious post. You also claimed that “contemporaneous” reporting “from that time, from that day” make that clear. Yet, just a few weeks after writing that initial piece, in response to outcry on Harvard’s campus about the initial piece and calls to retract it, you published another piece on November 8, 1994. In that November 8 piece, you never mentioned that the piece was “satire.” If your original piece was intended as “satire,” why did you never characterize it as such when defending it at the time?

**RESPONSE: I made clear those were not my actual views, as reported in a news article in The Crimson at the time, and commented on by a Jewish student leader, Mr. Kaunfer, in his own letter at the time: "Clarke...said those views are not offered as her own." See <https://www.thecrimson.com/article/1994/11/7/call-for-retraction-not-professional-pi/>**

38. During your hearing, you were asked by Senator Cornyn about a deeply offensive piece that you wrote while at Harvard, in which you listed racist theories that African Americans are genetically superior to other races, and you wrote in the piece that you included those

theories to “assist [students] in [their] search for truth regarding the genetic differences between Blacks and whites.” You claimed, in response to Senator Cornyn’s question, that you had always meant that piece as “satire,” not as a serious post. You also claimed that “contemporaneous” reporting “from that time, from that day” make that clear. Yet, just a few weeks after writing that initial piece, in response to outcry on Harvard’s campus about the initial piece and calls to retract it, you published another piece on November 8, 1994. In that November 8 piece, not only did you fail to refer to your original piece as “satire,” but you also stated only that “the information [in the original piece] is not necessarily something we believe.” You did not, however, confirm or deny whether you believed the information in your original piece. Have you ever believed in or agreed with the positions you wrote in your original piece, which you now claim was “satire”?

**RESPONSE: No.**

39. On what date did you first discuss with the Biden campaign or transition team the possibility that you could be nominated to the position of Assistant Attorney General?

**RESPONSE: I was approached in mid-December about potential service inside the U.S. Department of Justice.**

40. On what date did the Biden campaign or transition team inform you that President Biden would nominate you to the position of Assistant Attorney General?

**RESPONSE: I received a formal offer from President-elect Biden in early January.**

41. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

**RESPONSE: I received questions for the record from members of the Senate Judiciary Committee on April 21, 2021. To answer these questions, I consulted with Department attorneys, conducted my own research, conferred with colleagues to refresh my recollection of certain matters, and for certain questions conferred with counsel for the Lawyers’ Committee for Civil Rights Under Law. After answering the questions, I authorized their transmission to the Senate Judiciary Committee on April 26, 2021.**

42. Did any other individual write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual that wrote or drafted your answers. If the individuals are government officials, please also identify the department or agency with which they are employed.

**RESPONSE: Please see my response to question 41.**

**Senator Dick Durbin**  
**Chair, Senate Judiciary Committee**  
**Written Questions for Kristen Clarke**  
**Nominee to be Assistant Attorney General, Civil Rights Division**  
**April 21, 2021**

1. Throughout your career, you have worked with law enforcement at the federal, state, and local level in a number of different capacities, from working with agents to prosecute cases to partnering with law enforcement agencies to develop best practices to enhance their response to hate crimes.

What have you learned through your working relationships with law enforcement over the years about the difficult challenges that we often ask the police to deal with?

**RESPONSE:** As a former federal prosecutor and chief civil rights enforcement officer for New York State, I have worked closely with federal and state law enforcement officials. I appreciate the challenges of their job and deem their role essential to thoroughly investigate and prosecute cases. There is tremendous common ground between the civil rights and law enforcement communities. Finding this common ground requires the willingness and ability to engage. In partnership with the International Association of Chiefs of Police, I developed protocols for strengthening law enforcement's response to hate crimes. Partnership and collaboration with law enforcement open the door for identifying solutions to some of the most difficult challenges that we face. I also appreciate that law enforcement officers are often asked to contend with societal problems that lie outside their core competencies. The decrease in resources for mental health treatment, for example, has led to an increase in the number of interactions that law enforcement has with people experiencing mental health issues. By confronting this problem directly and through an increase in resources, we can help improve public safety and help ensure that law enforcement can more effectively deploy their resources.

2. You have spent your entire career defending civil rights for all people, including defending religious liberty and combatting anti-Semitism.

Can you elaborate on what work you have done during your legal career to get to know communities of faith and their needs and to defend religious liberty?

**RESPONSE:** I started off my career in the U.S. Department of Justice, spending much of that time as a federal prosecutor working to confront hate crimes and more. I know that the Church Arson Prevention Act, the Matthew Shepard and James Byrd Hate Crimes Prevention Act, the Fair Housing Act, and the Religious Land Use and Institutionalized Persons Act are just a few of the federal laws that help to address religious discrimination, including anti-Semitism. I have dedicated my career to confronting hate, bias and bigotry and deem anti-Semitism to be an ongoing threat that we face in society today.

**During my time at the New York State Attorney General's Office, I led a Religious Rights Unit focused on promoting religious liberty and confronting religious discrimination. I**

**hosted roundtable meetings with faith leaders and other community leaders to understand their concerns and needs. I traveled across New York State for meetings that included faith leaders and community leaders to gain a deep, regional-based understanding of religious discrimination.**

**At the Lawyers' Committee, I have issued statements to stand in solidarity with other faith communities when their synagogues, mosques or houses of worship were attacked or desecrated, and called for investigations into these matters to ensure that these incidents were not ignored.**

**Given recent FBI data making clear that hate and extremism are significant problems in our country, I have explored ways to expand our work at the Lawyers' Committee to address hate, including religious bigotry. In the course of this work, we have helped to fight anti-Semitism and bigotry by holding accountable neo-Nazi groups such as the Daily Stormer and Stormfront through litigation and other legal advocacy.**

**I believe that engagement with communities of faith is critical to understanding where the starkest problems lie when it comes to religious discrimination, and bigotry. If confirmed, I hope to continue work to help address the needs of faith communities across our nation.**

3. Currently, our country is facing several serious threats to civil rights, many of which were unaddressed or exacerbated by the Trump administration. For example, there is a troubling rise in hate crimes generally—and against the AAPI community in particular—and several states are implementing voting rights restrictions that will disproportionately disenfranchise communities of color, the elderly, service members, and others.

These issues all fall within the jurisdiction of the Justice Department's Civil Rights Division. How has your career prepared you to effectively lead the Civil Rights Division from Day One in confronting these challenges?

**RESPONSE: I have spent the majority of my career working in government, at the federal and state levels. I have also spent significant time working in the 501(c)3 non-partisan sector. These unique roles have allowed me to touch virtually every aspect of the Civil Rights Division's work. I believe that my professional record will allow me to effectively lead the Division on Day One, with the support provided by the Division's career attorneys and other professional staff.**

**I understand the threat that hate crimes pose to the fabric of our nation. These are crimes that target particular individuals on the basis of race, religion, national origin, LGBTQ status and more. These crimes are also unique in that they have broad reverberating effects across communities. Both President Biden and Attorney General Garland have identified the threat posed by hate crimes and I look forward to, if confirmed, working to ensure that the Civil Rights Division is working alongside other components inside the Justice Department to confront the growing threat of hate and extremism in our country.**

**I also have extensive experience enforcing federal voting rights laws such as the Voting Rights Act, the National Voter Registration Act, the Uniformed and Overseas Citizens Absentee Voting Act and more. I look forward to using these laws, passed by Congress with significant bi-partisan support, to help ensure that eligible Americans have access to the ballot, particularly in the wake of growing threats to ballot access in the country.**

4. As the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law, you have used your platform to highlight civil rights violations and call for thorough investigations of such violations.

Can you elaborate on what role you believe civil rights organizations play in ensuring state actors perform their constitutional and statutory duties in protecting and defending civil rights? How does that role differ from the one you will take on as Assistant Attorney General for the Civil Rights Division?

**RESPONSE: As the president and executive director of the Lawyers' Committee for Civil Rights Under Law, I have partnered with corporate law firms and general counsels across the country to help enforce our civil rights laws. I have also used that platform to call for action from federal, state and local law enforcement officials when there are allegations of potential violations of law. For example, I have worked with hate crime survivors and their families and leveraged the Lawyers' Committee's platform to ensure that their voices are heard and to ensure that their requests for reform are not ignored. Our efforts to call for investigations have helped to ensure that crime victims are heard, that allegations are investigated, and that difficult issues are closely examined and addressed.**

**As someone who has spent the majority of her career working for government, I fully appreciate that the Assistant Attorney General position is a different role. Government officials have unique tools to investigate allegations. While members of the public may call for action, the Department of Justice can and must only take enforcement action after a complete and thorough investigation that uncovers a violation, and when necessary to preserve the interests of the United States.**

**Senator Grassley, Ranking Member**  
**Questions for the Record**  
**Kristen Clarke**

**Nominee to be United States Assistant Attorney General, Civil Rights Division**

1. I know for this nomination process you will enter into an ethics agreement through DOJ's ethics officials.
  - a. Can you give me the status of that agreement or how those discussions have gone?
  - b. In your current role, your name has been on many briefs before the Supreme Court and courts of appeal. Can you at least pledge today that you will recuse yourself from cases/policies involving issues you have taken a position on in a brief?

**RESPONSE: I submitted my ethics agreement to the Department of Justice on March 9, 2021. I deem adherence to government ethics rules and requirements to be critical to ensuring fairness and impartiality in the administration of justice. If confirmed to lead the Civil Rights Division, I will consult the Department of Justice's career ethics officials about recusal issues and seek their guidance and input when appropriate. I will abide by applicable rules, policies, and practices.**

2. Last week you provided an update to your Questionnaire to the Committee that you were also a registered lobbyist for the NAACP during your time there.
  - a. Can you explain to me why that was not initially disclosed on your Questionnaire?
  - b. Can you tell me all the specific issues you have lobbied on and to whom?
  - c. Will you commit to recusing yourself from issues you lobbied on while at the NAACP?

**RESPONSE: At the time I submitted my Senate Judiciary Committee questionnaire I was not aware that I has been listed as a lobbyist by my employer, the NAACP Legal Defense and Educational Fund, where I worked from 2006 to 2010. When it was brought to my attention that I had been listed, I supplemented my Questionnaire. The forms indicate the topics on which NAACP LDF lobbied included voting rights, criminal justice reform, immigration reform, fair pay, and nominations. To the best of my recollection, any lobbying I may have done during that period was a de minimis part of my job. If confirmed to lead the Civil Rights Division, I will consult the Department of Justice's career ethics officials about recusal issues and seek their guidance and input when appropriate. I will abide by applicable rules, policies, and practices.**

3. In your Questionnaire you said you were a member of the Leadership Conference's Voting Rights Task Force from approximately 2006 to 2011. However, as recently as January 19, 2021, your name was listed on the letterhead of advocacy letters sent out by the Leadership Conference as a member of the Board of Directors.<sup>1</sup>
  - a. Have you been a member of the Leadership Conference's Board of Directors?
  - b. If so, can you explain why you didn't list your participation as a member of the Leadership Conference's Board of Directors on your Questionnaire?
  - c. If so, how long were you on the Board of Directors of the Leadership Conference?

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<sup>1</sup> [http://civilrightsdocs.info/pdf/policy/letters/2020/Sign\\_on\\_Letter\\_in\\_Support\\_of\\_HR1\\_1\\_19\\_21.pdf](http://civilrightsdocs.info/pdf/policy/letters/2020/Sign_on_Letter_in_Support_of_HR1_1_19_21.pdf)



- d. Have you been a member of any other groups you didn't include in the Questionnaire? Please list any that you omitted from your Questionnaire.
- e. Will you commit to recusing yourself from issues the Leadership Conference advocated for with your name on its letterhead?

**RESPONSE: I have been a member of the board of the Leadership Conference since 2016. I neglected to note my membership on the Board; however, I did include all statements of the Leadership Conference where I served as a signatory in my Questionnaire. This was not a knowing or intentional omission. I am not aware of any other omissions from the Questionnaire. If confirmed to lead the Civil Rights Division, I will consult the Department of Justice's career ethics officials about recusal issues and seek their guidance and input when appropriate. I will also abide by applicable rules, policies, and practices.**

4. During your hearing Senator Blackburn asked you about a characterization you made about the Alliance Defending Freedom (ADF). You said you could not recall the context of your comment. This is the tweet from December 10, 2018:



- a. Now that your memory is refreshed, do you stand by your characterization of ADF as an “anti-LGBTQ hate group?”
- b. Why did you describe The Liberty University School of Law as a “fundamentalist Christian school”?

- c. How do you define the “Religious Right?” What would America look like if it was “remade in the Religious Right’s image?”

**RESPONSE: I have used my platform as the leader of a national civil rights organization to bring attention to issues that are important to achieving equal justice for all. In retrospect, I regret the tone I occasionally took. I welcome the opportunity, as President Biden and Judge Garland have emphasized, to turn down the volume and lower the temperature.**

5. Does having attended a “fundamentalist Christian” law school affect someone’s fitness to serve in the Justice Department?

**RESPONSE: No. Like Attorney General Garland, if confirmed, I would assess any candidate’s fitness for a role in the Department on an individual basis, with the goal of hiring those who are capable and committed to carrying out the Department’s mission. If confirmed, I will make personnel decisions within my purview consistent with federal law, including the civil service laws, and with Departmental policies.**

6. Should you be confirmed, would otherwise-qualified graduates of “Jerry Falwell’s law school” be eligible for employment in the Civil Rights Division?

**RESPONSE: Yes. Like Attorney General Garland, if confirmed, I would assess any candidate’s fitness for a role in the Department on an individual basis, with the goal of hiring those who are capable and committed to carrying out the Department’s mission. If confirmed, I will make personnel decisions within my purview consistent with federal law, including the civil service laws, and with Departmental policies.**

7. What affirmative action, if any, do you intend to take to make sure that graduates of Christian schools feel welcome in the Civil Rights Division hiring process given what seems to be your previous criticism of the Justice Department hiring a Liberty University graduate?

**RESPONSE: Decisions about hiring or the placement of career personnel should not be made on the basis of an ideological litmus test—but on other factors, such as relevant experience. Like Attorney General Garland, if confirmed, I would assess any candidate’s fitness for a role in the Department on an individual basis, with the goal of hiring those who are capable and committed to carrying out the Department’s mission. If confirmed, I will make personnel decisions within my purview consistent with federal law, including the civil service laws, and with Departmental policies.**

8. In your tweet, you invite your followers to “Meet Kerri Kupec” and linked to an article by the Daily Kos. Please review that article.<sup>2</sup>
  - a. Have you yourself ever met Kerri Kupec?

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<sup>2</sup> Jessica Sutherland, *New DOJ Hire has Jerry Falwell-signed Law Degree, Defended Kavanaugh, and Worked for a Hate Group*, Daily Kos, Dec. 7, 2018, available at <https://www.dailykos.com/stories/2018/12/7/1817647/-New-DOJ-hire-has-Jerry-Falwell-signed-law-degree-defended-Kavanaugh-and-worked-for-a-hate-group>

- b. Do you agree with the article’s author that Ms. Kupec “embraces a future of hatemongering”?
- c. The article, in comparing Ms. Kupec to Sarah Huckabee-Sanders, says that Ms. Kupec “may not rock a smokey eye, but Kupec surely makes the Huckster proud.” Why did you think it was useful for your Twitter followers to know about Ms. Kupec’s makeup routine? Do you think such comments about public-facing women are appropriate?
- d. Do you agree with the article’s characterization of Ms. Kupec as a “poorly educated, success-chasing hatemonger with a mediocre on-camera presence”?
- e. Do you think these are fair ways for your Twitter followers to “meet” Ms. Kupec?

**RESPONSE: I have used my platform as the leader of a national civil rights organization to bring attention to issues that are important to achieving equal justice for all. In retrospect, I regret sharing this article. I welcome the opportunity, as President Biden and Judge Garland have emphasized, to turn down the volume and lower the temperature.**

9. In your hearing you defended your Newsweek op-ed multiple times.<sup>3</sup> One of your defenses was that you were actually not calling for defunding of the police, despite the title of the article, because you did not write the title.
  - a. In the article itself, you wrote: “I advocate for defunding policing operations that have made African Americans more vulnerable to police violence and contributed to mass incarceration, while investing more in programs and policies that address critical community needs.” Did you write this line?
  - b. Specifically, which police operations qualify for the defunding standard you lay out above?
  - c. You also wrote that “some parts of police budgets that should be eliminated immediately, like the federal ‘1033 program.’” This implies that there are probably other such parts. Which other parts of police budgets should be eliminated immediately?

**RESPONSE: I wrote that article to make clear that I do not support defunding or abolishing the police. I have worked closely with crime victims throughout my career, including hate crime, trafficking and domestic violence victims and fully appreciate the need to have law enforcement support to respond to, investigate and help prosecute crimes.**

**As a former federal prosecutor and state law enforcement official, and in my work at the Lawyers’ Committee for Civil Rights Under Law, I have worked with the police throughout my career to successfully prosecute federal and state civil rights cases, and to develop policies to improve police practices. I am proud to have endorsements or the support of law enforcement organizations or representatives of the Major Cities Chiefs Association, National Association of Police Organizations, International Association of Chiefs of Police, National Organization of Black Law Enforcement Executives, National Association of Women Law Enforcement Executives, Hispanic American Police Command Officers Association, Women in Federal Law Enforcement, and over 40 current and former police chiefs and sheriffs from across the country. I am also proud to be supported**

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<sup>3</sup> Kristen Clarke, *I Prosecuted Police Killings. Defund the Police—But Be Strategic*, Newsweek, June 11, 2020.

**by numerous crime victim advocates and domestic violence organizations, as well as numerous former Justice Department officials and current and former State Attorneys General.**

**Through my work, I appreciate the challenges today's law enforcement officers face. I support finding strategies to ensure that law enforcement can carry out their jobs more safely and effectively, and channeling resources to emotional health treatment and other severely under-resourced areas. Furthermore, I support President Biden's commitment of \$300 million to COPS to help ensure that police have more resources to do their jobs. With more resources, the Justice Department can work to ensure that they can carry out their roles more effectively.**

10. During your hearing you said that voter ID laws should be looked at on a case-by-case basis to determine if they are discriminatory. You also said that requiring identification to vote is acceptable in some states but not others. Based on the statement you made in the hearing, in which states is it acceptable to require an ID to vote and in which states is it not?

**RESPONSE: Voter identification laws vary significantly from jurisdiction to jurisdiction and must be reviewed on a case-by-case basis. As Attorney General Garland testified, some may have a discriminatory purpose, and some have no discriminatory purpose. The role of the Justice Department is to enforce federal law based on the facts of each case, and if confirmed, I would do just that.**

11. Senator Booker invoked John Adams representing British soldiers accused of murder during the Boston Massacre as a reason why you are the right person for the job. Please list all the cases where you represented a client whose views you disagreed with or whose alleged crimes you found offensive.

**RESPONSE: I will enforce the law without regard to politics or partisanship if the confirmed to this position, as I have throughout my career. I am not able to identify a case that I worked on where I disagreed with my client. Prior to becoming a lawyer, I provided legal support on a matter involving a cruise ship alleged to have engaged in dumping of oil and sludge. While I did not represent the client in the matter and had concerns about the impact of the alleged conduct on human life and the environment, I was able to work on the matter diligently, following the facts and the law as instructed.**

12. There may have been some confusion regarding my question at your hearing about gender and racial diversity on the federal bench, so let me be clearer now.
- a. When Senate Democrats asked hostile questions of and voted against President Trump's judicial nominees that were female, racial minorities, or LGBTQ, were Senate Democrats necessarily being sexist, racist, or otherwise discriminatory? If not, please explain.

**RESPONSE: No.**

- b. Now the shoe is on the other foot. Senate Republicans will inevitably ask questions of and vote against some of President Biden’s nominees who are female, racial minorities, or LGBTQ. (They will also do so against nominees who happen to be white men.) When Senate Republicans do so, is that necessarily being sexist, racist, or otherwise discriminatory?

**RESPONSE: No.**

13. Judge Patrick Bumatay is a Judge on the U.S. Court of Appeals for the Ninth Circuit, appointed by President Trump. He is Filipino-American and openly gay. Was it possible for Democrats to oppose the nomination of Patrick Bumatay to the Ninth Circuit without opposing him *because* he was gay?

**RESPONSE: Yes, it is possible for some Senators to oppose the nomination of Patrick Bumatay to the Ninth Circuit without opposing him *because* he was gay.**

14. Was it possible for Democrats to oppose the nomination of Patrick Bumatay to the Ninth Circuit without opposing him *because* he was Filipino-American?

**RESPONSE: Yes, it is possible for some Senators to oppose the nomination of Patrick Bumatay to the Ninth Circuit without opposing him *because* he was Filipino-American.**

15. During Justice Kavanaugh’s hearings, you tweeted, “Judge Kavanaugh must fully address what he knew about [Judge] Kozinski’s abusive behavior and what actions he took in response. The Senate must fully explore Kavanaugh’s view on sexual harassment and whether or not he condemns the actions of his former boss.”<sup>4</sup> Your former boss, New York Attorney General Eric Schneiderman, has been accused by multiple women of physical and emotional abuse.<sup>5</sup>

- a. Based on your standard for Justice Kavanaugh, what did you know about Schneiderman’s abusive behavior and what actions did you take in response?
- b. Do you condemn his behavior?
- c. During the height of the #MeToo movement, you tweeted many times in support of the movement and in victims coming forward. Yet, after your former boss was accused by multiple women, you did not tweet any condemnations of his actions or support for his victims. Why not?

**RESPONSE: I worked in the New York State Office of the Attorney General from 2011 to 2015. The accusations against Mr. Schneiderman which you reference in your question were not made until 2018. I was not aware of these or any other similar allegations against Mr. Schneiderman when I worked in that office.**

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<sup>4</sup> <https://twitter.com/KristenClarkeJD/status/1018967601660289032>

<sup>5</sup> Jane Mayer & Ronan Farrow, *Four Women Accuse New York’s Attorney General of Physical Abuse*, *The New Yorker*, May 7, 2018, available at <https://www.newyorker.com/news/news-desk/four-women-accuse-new-yorks-attorney-general-of-physical-abuse>.

16. In 2013 the New York Times reported that New York Attorney General Schneiderman had opened an investigation into allegations of flagrant antisemitism in a New York school district.<sup>6</sup> Subsequent analysis by the New Republic argued that the issue may have been more complex than mere antisemitism, with tensions bubbling up between the large Jewish population in Pine Bush and the large ultra-orthodox Satmar population in nearby Kiryas Joel.<sup>7</sup> The New Republic said of the Times story, “While there is likely a there there—and indeed, reporter Benjamin Weiser subsequently reported Justice Department and New York state investigations—there may also be something more: A sign of tensions not only between Jews and Gentiles but between different kinds of Jews.” It just goes to show that claims of religious discrimination—and religious rights—can be made complicated by not only by conflict between different religions but by conflict within individual faiths.

- a. What is the role of a government actor in enforcing religious liberty or non-discrimination when it evaluates competing claims from *within* a given religious faith?

**RESPONSE: Protection against discrimination on the basis of religion is an issue in its own right and can certainly apply even if the victim and perpetrator are of the same religion.**

- b. Can members of the same faith discriminate against each other?

**RESPONSE: Yes.**

- c. Can members of one faith assert claims of religious liberty on behalf of their coreligionists?

**RESPONSE: Yes.**

- d. Can members of one same faith rebut claims of religious liberty made by their coreligionists?

**RESPONSE: Yes.**

17. During your time in the New York Attorney General’s office, did you ever bring civil-rights enforcement actions in favor of Satmar, Haredi, or other “ultra-Orthodox” Jews?

**RESPONSE: As Chief of the Civil Rights Bureau, I repeatedly defended Jewish employees’ right to observe their faith through my leadership of the office’s Religious Rights Unit. For example, during my tenure, the Bureau reached a settlement guaranteeing that employees of Milrose Consultants could celebrate the Sabbath. We also reached a settlement protecting New York City Health and Hospitals Corporation**

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<sup>6</sup> Benjamin Weiser, *U.S. Investigates Anti-Semitism Claims at Pine Bush School*, The New York Times, Nov. 13, 2013, available at <https://www.nytimes.com/2013/11/14/nyregion/us-investigates-anti-semitism-claims-at-pine-bush-schools.html>.

<sup>7</sup> Marc Tracy, *Did Hasidic Jews Leak Anti-Semitism Accusations to the New York Times?*, The New Republic, Dec. 11, 2013, available at <https://newrepublic.com/article/115892/kiryas-joel-new-york-anti-semitism-accusations-who-leaked-times>.

**employees' right to observe the Sabbath. Members of the Jewish community who observe the Jewish Sabbath, including Satmar, Haredi, and others, would have benefited from actions taken to protect the rights of Sabbath observers to practice their faith.**

18. A recent New York Times expose into Governor Andrew Cuomo's rise to power in New York had a troubling anecdote about Governor Cuomo's reaction to attending an event celebrating Sukkot. According to a person who witnessed the event, the Governor said, "These people and their [expletive] tree houses."<sup>8</sup>
- a. In your time with the New York State Attorney General's Office, did you ever hear other elected officials use such anti-Semitic language?
  - b. As Civil Rights Chief for New York, would such a comment from a landlord about current or prospective Jewish tenants have triggered an investigation? If not, why not?
  - c. Do you believe such language, if true, reflects animus?

**RESPONSE: I never heard anti-Semitic language used by employees of the New York State Attorney General's Office when I worked there. If I had, I would have spoken out about it. It would be unacceptable, as would any bigoted language or behavior. Whether a particular comment or action should prompt a civil rights investigation can only be determined on a case-by-case basis after a review of the facts and the law.**

19. In your op-ed about defunding the police, you said that there is a "need to truly reform policing in our country in ways that can produce racially just outcomes for communities." Can you explain what you mean by "racially just" outcomes?

**RESPONSE: We need to address flaws in our justice system that lead to disparities on racial and/or socioeconomic lines. Eliminating these disparities and protecting against unconstitutional conduct by law enforcement or other officials, will restore faith in our criminal justice system--that faith is essential to keeping communities safe.**

20. You had a number of exchanges about the Race-ing Justice Conference from when you were in law school. Many of the attendees of the conference attended a rally in Philadelphia the next day in support of Mumia Abu-Jamal. Did you attend that rally?

**RESPONSE: No.**

21. A former DOJ official and ACLU attorney testified under oath about the DOJ's decision to change its prosecuting decision in the New Black Panther Party case. Under oath, this official said, "Ms. King, Mr. Rosenbaum, Mr. Kappelhoff, Ms. Clarke, a large number of the people working in the Voting Section and in the Civil Rights Division and many of the liberal [interest] groups at work in the civil rights field believe incorrectly but vehemently that enforcement of the protections of the Voting Rights Act should not be extended to

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<sup>8</sup> Matt Flegenheimer, *Andrew Cuomo's White-Knuckle Ride*, The New York Times, April 13, 2021 (updated April 19, 2021), available at <https://www.nytimes.com/2021/04/13/magazine/andrew-cuomo.html>.

white voters but should be extended only to protecting racial, ethnic, and language minorities.”

- a. Was this statement by the former Justice Department official correct?
- b. If not, in what parts was it not correct?
- c. How do you respond to this statement?
- d. Do you think racial minorities can violate the Voting Rights Act?

**RESPONSE: That statement is incorrect insofar as it suggests that I “believe ... vehemently that enforcement of the protections of the Voting Rights Act should not be extended to white voters but should be extended only to protecting racial, ethnic, and language minorities.” The protections of the Voting Rights Act do not apply only to “racial, ethnic, and language minorities,” they apply to all people. Throughout my career, I have undertaken work that has helped secure the rights of a broad range of eligible American voters, including voters of all racial and ethnic backgrounds, language minorities, voters with disabilities, and voters who serve in our nation’s military.**

22. During the Civil Rights Commission’s investigation into the DOJ for its handling of the New Black Panther Party case, you were subpoenaed. In your deposition, under oath, you twice answered in the negative when asked if you had “a conversation with Laura Coates of the Justice Department with regard to the litigation.” However, also under oath, another DOJ official, Christopher Coates, testified that : “[I]t was reported to me that Ms. Clarke approached an African-American attorney who had been working in the Voting Section for only a short period of time in the Winter of 2009, before the dismissals in the Panther case and asked that attorney when the New Black Panther Party case was going to be dismissed. The Voting Section attorney to whom I refer was not even involved in the Panther case. This reported incident led me to believe in 2009 that the Legal Defense Fund Political Participation Director, Ms. Clarke, was lobbying for the dismissal of the New Black Panther Party case before it was dismissed.”

The Civil Rights Commission concluded, “As of this date, it is not possible to reconcile the competing versions of such contacts, due to the fact that the Department has precluded its employees from testifying before the Commission (and refused to provide all relevant emails and documents), and Ms. Clarke has refused to testify regarding certain relevant questions. At a minimum, it would be highly relevant if Laura Coates and others could testify as to whether the NAACP Legal Defense Fund was seeking to have the suit dismissed or raised other concerns about the litigation.”

- a. Do you still stand by your testimony that you did not have a conversation with Laura Coates concerning the litigation?
- b. If so, does that mean Christopher Coates was lying?
- c. Do you think testimony from Laura Coates and Christopher Coates to the Judiciary Committee would help to resolve this discrepancy?

**RESPONSE: I stand by the testimony I provided under oath. I cannot speak to prior statements given by others or the potential testimony of others.**

23. During your hearing you mentioned there was contemporaneous reporting supporting the claim that your statements about genetic differences in college was satirical. At the same



time, the Harvard Crimson editorial board criticized your letter. It said, “Rather than attack the questionable research and logic underlying *The Bell Curve*, however, Clarke resorted to bigotry, plain and simple, to reach the opposite conclusion.”<sup>9</sup> In that same article, you are quoted as saying “the information [contained in the letter] is not necessarily something we believe, but some information that we think those pursuing [sic] a true understanding of *The Bell Curve* theory should either address, ignore or refute.” The Crimson editorial board responded: “Aside from the fact that we don’t think Clarke actually meant people should *ignore* her views, her follow-up statement doesn’t suggest any tempering of the beliefs espoused in the letter. Clarke says she doesn’t ‘necessarily’ believe her assertions. Well does she or doesn’t she? So far, she has given us every indication that she does.”

- a. Is this the contemporaneous reporting you referenced in your hearing?
- b. Did you have different contemporaneous reporting in mind? If you did, it would be good for the Committee to see it, so please provide it.
- c. Given that your words don’t seem to have come off as satire to your peers when you wrote them, and that they don’t appear satirical to many members of this Committee today, will you heed the advice of the Crimson editorial board from 1994 and retract your statements and apologize for them?

**RESPONSE: I was referring to this news article and letter from a Jewish student leader:**

<https://www.thecrimson.com/article/1994/10/28/book-sparks-campus-debate-pmental-physical/>

<https://www.thecrimson.com/article/1994/11/7/call-for-retraction-not-professional-pi/>

**The 1994 letter to the editor was meant to hold a mirror up to absurd views of racial superiority, no matter what race they seek to define. I did not then and nor do I now believe that views that express discrimination aimed at any community have a place in our country.**

24. In 2017, you quote-tweeted a video of a flood in Charleston, South Carolina and said that Senator Tim Scott supported the decision to leave the Paris Agreement.<sup>10</sup>
  - a. What was the purpose of mentioning Senator Scott’s views on the Paris Agreement?
  - b. Do you believe that, had Senator Scott supported remaining in the Paris Agreement, the flood in Charleston would not have occurred?

**RESPONSE: At the Lawyers’ Committee I used my platform to highlight the damages that climate change has had on our society and communities of color.**

25. You have tweeted that “Many of our judges continue to be fair and impartial and they are quietly delivering significant blows to Trump’s agenda.”<sup>11</sup>
  - a. Are judges only fair and impartial if they rule against the Trump administration?
  - b. If a judge ruled in favor of the Trump administration, did that mean he or she was not fair and impartial?

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<sup>9</sup> The Crimson Staff, *Clarke Should Retract Statements*, The Harvard Crimson, Nov, 4, 1994. Available at <https://www.thecrimson.com/article/1994/11/4/clarke-should-retract-statements-pbtbwo-years/>.

<sup>10</sup> <https://twitter.com/KristenClarkeJD/status/907386987501506560>

<sup>11</sup> <https://twitter.com/KristenClarkeJD/status/1066464650966036480>

**RESPONSE: I have tremendous respect for the federal judiciary and the important role judges play in ensuring the rule of law and safeguarding the rights and privileges afforded by the Constitution.**

26. You tweeted that Senator Manchin’s decision to vote for Justice Kavanaugh was “unreal.”<sup>12</sup> What did you mean by this statement?

**RESPONSE: After a review of then Judge Kavanaugh’s record, the Lawyers’ Committee for Civil Rights Under Law decided not to support his nomination to the Supreme Court; while we found him qualified, we did not find that his record, at that time, reflected a strong commitment to civil rights. This tweet reflected that position.**

27. You invited Professor Tony Martin to speak on Harvard’s campus the year after he published a book titled *The Jewish Onslaught*. After his speech, you said, “Professor Martin is an intelligent, well-versed Black intellectual who bases his information on indisputable fact.”<sup>13</sup>

a. Have you read *The Jewish Onslaught*?

**RESPONSE: No.**

b. Do you think Professor Martin’s speech was anti-Semitic? Did you think it was anti-Semitic at the time?

**RESPONSE: I do not recall the specific content of Professor Martin’s speech. I regret accepting Martin’s offer to speak on campus regarding The Bell Curve and giving him a platform to speak.**

c. At least one Jewish student group criticized the decision to invite Martin and the content of his speech. How did you respond to that criticism?

**RESPONSE: I do recall feeling it was important to continue the dialogue with Jewish students, which I had done previously and continued to work to do. That ongoing dialogue was described by Michael Goldenpine, a Jewish student leader on campus at the time, in a letter of support he wrote to the Committee on my behalf.**

<https://www.judiciary.senate.gov/imo/media/doc/Michael%20Pine%20Letter%20in%20Support%20of%20Clarke%20Nomination.pdf>

28. Following the Supreme Court’s order blocking New York’s emergency COVID restrictions on houses of worship, you tweeted, “This is a newly configured Supreme Court, one w/ Justice who place religious freedom above ALL else even in the context of a deadly pandemic.” Another Twitter user responded, “Let’s not say the conservative majority places ‘Religious Freedom’ above all else. That is their framing, like ‘pro-life.’ Let’s say

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<sup>12</sup> <https://twitter.com/KristenClarkeJD/status/1048311982175281154>

<sup>13</sup> The Crimson Staff, *Clarke Was Wrong To Endorse Martin*, The Harvard Crimson, Dec. 7, 1994. Available at <https://www.thecrimson.com/article/1994/12/7/clarke-was-wrong-to-endorse-martin/>

they place religious zealotry above all else.” You “liked” that response. What in particular did you like about that tweet?

**RESPONSE: I have used my platform as the leader of a national civil rights organization to bring attention to issues that are important to achieving equal justice for all. In retrospect, I regret the tone I occasionally took. I welcome the opportunity, as President Biden and Judge Garland have emphasized, to turn down the volume and lower the temperature.**

29. In the absence of a regulation prohibiting the use of settlements with non-affected third parties, what is the constitutional justification for their continued use?

**RESPONSE: I understand that Department of Justice regulations currently govern when settlements may properly include payments to third parties. See 28 C.F.R. § 50.28. I understand the importance of these guardrails and will comply with these regulations.**

30. Since 2018, plaintiffs’ counsel have filed thousands of lawsuits and sent an untold number of settlement demand letters to business owners alleging their websites are not accessible to the blind or visually impaired, in violation of Title III of the Americans with Disabilities Act (ADA). The bulk of these claims allege that private websites qualify as places of public accommodation and that websites with access barriers—such as those without compatible screen-reading software—deny individuals the right of equal access. Will the Department provide clarity on the law by resolving the question of whether private websites fall under the ADA? And will the Department provide clear parameters and guidance on how to comply with the law?

**RESPONSE: In general, it is very important for people to understand their rights (and for covered entities to understand their obligations) under the law. If confirmed, I would work closely with career officials in the Justice Department and community stakeholders (including small businesses and others in the business community) to consider whether any Department action is necessary in this area and, if so, help develop an appropriate response.**

31. Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?

**RESPONSE: If confirmed, I would approach this question as I would any issue, by working with subject-matter experts at the Justice Department, including career lawyers, and seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.**

32. Are state laws protecting the unborn under the purview of the Civil Rights Division? If so, how?

**RESPONSE: The Civil Rights Division is responsible for enforcing “all Federal statutes affecting civil rights, including those pertaining to elections and voting, public**

accommodations, public facilities, school desegregation, employment (including 42 U.S.C. 2000e-(6)), housing, abortion, sterilization, credit, and constitutional and civil rights of Indians . . . and of institutionalized persons.” 28 C.F.R. § 0.50(a).

33. Does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?

**RESPONSE:** The Supreme Court held that states may regulate abortion prior to viability based on the state’s interest in maternal health and potential life. However, those regulations may not impose and cannot have “the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 877 (1992).

34. Under the Religious Freedom Restoration Act the federal government cannot “substantially burden a person’s exercise of religion.”
- a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?
  - b. How is a burden deemed to be “substantial[.]” under current caselaw? Do you agree with this?

**RESPONSE:** The federal government may not “substantially burden a person’s exercise of religion” unless it “demonstrates that application of the burden to the person” is “in furtherance of a compelling government interest” and is “the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1. As the Supreme Court’s decisions illustrate, whether a law substantially burdens a person’s exercise of religion is an issue for the courts. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719-26 (2014). A court cannot second-guess the plausibility or reasonableness of the religious adherent’s beliefs. *Id.* at 723-26. Instead, the court’s “narrow function” is to determine whether the adherent’s asserted beliefs reflect an “honest conviction” and whether the challenged law “imposes a substantial burden” on the adherent’s ability to act in accordance with those beliefs. *Id.* at 723-24. One example of this analysis is in *Hobby Lobby*, where the Court held that the Affordable Care Act’s contraceptive-coverage requirement imposed a substantial burden on the plaintiffs’ exercise of religion. The Court reasoned the requirement obliged plaintiffs to “engage in conduct that seriously violates their religious beliefs,” and if they did not comply, they would have faced “substantial economic consequences” in the form of “substantial” penalty assessments. *Id.* at 720-21. If confirmed, I will enforce the Constitution and federal laws consistent with Supreme Court precedent.

35. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

**RESPONSE:** Religious liberty is vital to a pluralistic society, and the legal rights associated with it must be respected. If confirmed, I will uphold all rights guaranteed by

**the Constitution and other federal laws—including religious freedoms—to the fullest extent of the law.**

36. Do you agree with the Supreme Court that the principle of church autonomy goes beyond a religious organization’s right to hire and fire ministers? What, in your view, are the limits on church autonomy consistent with what the Supreme Court has said?

**RESPONSE:** The Supreme Court has recently reaffirmed that the First Amendment protects the right of religious institutions “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020). In that case, although the plaintiff schoolteachers “were not given the title of ‘minister,’” the Court held that their cases fell within the so-called “ministerial exception” to employment discrimination laws. *Id.* Under that exception, “courts are bound to stay out of employment disputes involving those holding certain important decisions with churches and other religious institutions.” *Id.* at 2060. The Court held that “[t]he religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission.” *Id.* at 2055. The Court did not adopt a “rigid formula” for determining whether an employee falls within the exception. *Id.* at 2069 (citation omitted). **If confirmed I will follow the law and judicial precedents in this area should such an issue come before me.**

37. Do you agree that the Religious Freedom Restoration Act requires assessing compelling government interests “to the person” substantially burdened by a government action?
- If not, why not?
  - If so, can *general* interests restrict religious liberty, or must the interests be defined more precisely?
  - How would you implement this principle in Justice Department guidance?

**RESPONSE:** The Religious Freedom Restoration Act “requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law ‘to the person’—the particular claimant whose sincere exercise of religion is being substantially burdened.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-431 (2006) (citation omitted). **If confirmed, I will ensure that the Division adheres to Department-wide policy in this area, and seek to ensure that guidance on this subject, is consistent with any relevant constitutional or statutory provisions and with applicable precedent.**

38. Do you agree with the following statements?
- We live in a pluralistic society with people of widely diverse faith traditions. Religious freedom for all is part of our country’s bedrock, from the enactment of our Constitution to the establishment of our more recent statutes that protect against religious discrimination.

- b. Title VII requires that employers not discriminate against applicants or employees because of their religious beliefs, observances, or practices and that employers accommodate religious beliefs, observances, and practices, absent undue hardship.
- c. Federal civil-rights regulators should seek to learn more about the extent to which employees request time off for prayer or Sabbath observance, seek exemption from grooming or dress codes, or seek to avoid participation in hot-button practices like abortion or LGBTQ celebration.
- d. It is important to improve religious discrimination awareness for employees and employers while encouraging meaningful dialogue between employees, employers, and the government.
- e. The federal government should prevent and remedy unlawful religious discrimination.

**RESPONSE: Religious liberty is important to me on both a personal and professional level. It is a principle that is enshrined in the Constitution's First Amendment and in other federal laws. Title VII prohibits employment discrimination on the basis of many protected classes, including religion, and generally requires employers to accommodate religion unless it would impose an undue hardship. As an employer, the Justice Department must abide by these, and, as a law enforcement agency, the Justice Department should vigorously work to prevent and seek remedies for unlawful employment discrimination on the basis of religion. If confirmed, I would work to ensure that the Civil Rights Division complies with all relevant constitutional and statutory provisions, rules and regulations, and applicable judicial precedents.**

39. Following the Supreme Court's opinion in *Espinoza v. Montana Department of Revenue*, the Department of Justice issued guidance summarizing religious liberty protections applicable to organizations that participate in the Department's grant programs. According to the guidance, absent a compelling government interest, the Department shall not disqualify otherwise-eligible recipients from a public benefit solely because of their religious character. Will you keep this guidance in place?

**RESPONSE: I am not presently at the Justice Department and I am not aware of all of the details surrounding the referenced guidance. If confirmed, I would welcome the opportunity to review this guidance, and would work to ensure that any guidance put out by the Civil Rights Division complies with applicable Supreme Court precedent. I am not aware that the Division administers grant programs in this area.**

40. Last summer the Department of Justice held voluntary training seminars on religious liberty for Department employees. Is it important for Justice Department Attorneys to be familiar with religious-liberty principles?

**RESPONSE: Because I am not presently at the Justice Department, I am not aware of the details surrounding the training seminars on religious liberty for Department employees that you reference. However, if confirmed, I would welcome the opportunity to learn more about them and identify ways to promote effective training of Department personnel.**

41. Should the Justice Department have a Religious Liberty Task Force?

**RESPONSE: Because I am not presently at the Justice Department, I am not aware of the details surrounding whether or not the Department should have a Religious Liberty Task Force. However, if confirmed, I would welcome the opportunity to work with career attorneys and Department leadership, and determine effective way to ensure that the Division continues enforcing religious liberty protections through laws such as the Religious Land Use and Institutionalized Persons Act, Title VII, and more.**

42. You can answer the following questions yes or no:

- a. Was *Brown v. Board of Education* correctly decided?
- b. Was *Loving v. Virginia* correctly decided?
- c. Was *Griswold v. Connecticut* correctly decided?
- d. Was *Roe v. Wade* correctly decided?
- e. Was *Planned Parenthood v. Casey* correctly decided?
- f. Was *Gonzales v. Carhart* correctly decided?
- g. Was *District of Columbia v. Heller* correctly decided?
- h. Was *McDonald v. City of Chicago* correctly decided?
- i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
- j. Was *Sturgeon v. Frost* correctly decided?
- k. Was *Juliana v. United States* (9th Cir.) correctly decided?
- l. Was *Rust v. Sullivan* correctly decided?

**RESPONSE: If confirmed as Assistant Attorney General of the Civil Rights Division, I will seek to ensure that the Division follows Supreme Court precedent as the law of the land.**

43. Prosecutors within the Human Trafficking Prosecution Unit in DOJ's Civil Rights Division work closely with federal prosecutors and law enforcement personnel to streamline human trafficking investigations, ensure consistent enforcement of trafficking statutes, and identify multijurisdictional trafficking networks. The FBI's Crimes Against Children and Human Trafficking program also focuses on detection and investigation of human trafficking crimes.

- a. If confirmed, will you ensure that the investigation and prosecution of human trafficking offenses remains a top priority for the Department?
- b. How will you do so?

**RESPONSE: Domestic and international human trafficking, the commodification of humans for forced labor, prostitution, and other illicit purposes, is a scourge on our nation. These are crimes that I prosecuted as a federal prosecutor. If I am confirmed, I commit to ensuring that the Civil Rights Division's efforts to combat these terrible offenses remain a priority. I will ensure that the Division continues to coordinate with other components inside the Justice Department on a range of anti-trafficking activities including investigations, prosecutions, victim-services, federal-state partnerships, innovative prevention efforts, and support for state, local, and tribal authorities and to non-governmental organizations.**

44. Former Attorney General Barr circulated an April 27, 2020 memorandum directing the Civil Rights Division and U.S. Attorney's Offices to participate, where appropriate, in civil litigation over excessive or unequal COVID-19 restrictions, including in defense of religious liberty. Will you continue the Justice Department policy, articulated in an April 27, 2020 memorandum, of participating, where appropriate, in civil litigation to defend Americans' religious freedom against unnecessary interference during the COVID-19 pandemic? If not, why not?

**RESPONSE: Religious liberty is important to me on both a personal and professional level, and the freedoms associated with it should be protected. Because I am not presently at the Justice Department, I am not aware of the details surrounding the policy you reference. However, if confirmed, I look forward to reviewing the policy and consulting with Department leaders and career staff regarding it. As I have done throughout my career, I will continue to work to protect religious liberty and combat religious discrimination.**

45. When the Department of Homeland Security described the Supreme Court's DACA opinion as having "no basis in law," Judge Garufis, in the Eastern District of New York, took exception to the executive branch criticizing a Supreme Court opinion. He asked a career Justice Department lawyer, "I'm just wondering how a decision by the Supreme Court could be deemed by a federal agency to have no basis in law. Can you explain that to me[?]" The judge went on, "The attorney general should advise his client Mr. Wolf that it is not [a] benefit to anyone to have a federal agency take issue with a decision of the Supreme Court. I'm very troubled by anyone who would write such a thing on a document issued by a federal agency regarding a decision by the U.S. Supreme Court or any court, until it is overruled or reversed, any federal court."
- a. Under your leadership will the litigating components under your supervision agree not to "take issue with a decision of the Supreme Court"?
  - b. Under your leadership will the litigating components under your supervision and their client agencies maintain publicly that all Supreme Court holdings have a sound basis in the law?

**RESPONSE: Like Attorney General Garland, I have great respect for the nation's courts and the judges to who sit on them. However, in certain cases, it is also appropriate and necessary for the Department of Justice to seek changes in the law, either working with Congress or in arguments before the courts. There are processes in place at the Department, through which decisions are made regarding how and when to ask courts to revisit established law. If confirmed, I would follow those processes and ensure that all decisions reached were objective, independent, and free from political influence. Regardless of the decision made, however, I share Attorney General Garland's commitment in seeking to ensure that all statements made by attorneys in the Civil Rights Division are appropriately respectful of the courts and their role in our constitutional system.**



46. Do Blaine Amendments violate the Constitution?

**RESPONSE:** The “Blaine Amendment of the 1870s” was a failed proposal to amend the U.S. Constitution to prohibit states from aiding religious schools. In *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246, 2259 (2020), the Supreme Court considered a provision of the Montana Constitution that prohibited any state aid to any school controlled by a “church, sect, or denomination.” *Id.* at 2251, 2259. The Court held that the Montana Supreme Court’s application of that no-aid provision to strike down a program to provide tuition assistance to parents who send their children to private schools violated the First Amendment.

47. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?

**RESPONSE:** The Department of Justice should take seriously credible allegations of election crimes, including fraud. These are not matters ordinarily handled by the Civil Rights Division. Such cases are typically prosecuted by the Criminal Division, which is under the purview of the Deputy Attorney General, and I would defer to the Deputy Attorney General in these matters. If confirmed, I would be as transparent as possible in assuring the American people that our elections remain free, fair, and secure.

48. You tweeted “As a civil rights lawyer with matters that regularly go before the Supreme Court, I can’t underscore how dangerous it will be to have [then-Judge Brett] Kavanaugh on the Court, a man who harbors such bias, rage, fury and is so easily unhinged. We should expect a spike in recusal motions for sure.”

- a. Do you still believe that Justice Kavanaugh is “dangerous” and “easily unhinged”?
- b. Are you confident that Justice Kavanaugh will be fair in hearing cases from the Justice Department under your leadership?
- c. Do you think the Solicitor General should seek his recusal in civil rights cases?

**RESPONSE:** In my opinion, Justice Kavanaugh as a Justice of the Supreme Court has demonstrated a judicial demeanor consistent with what members of the public expect of Supreme Court Justices.

49. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform.

- a. Do you agree with Attorney General Garland, Lisa Monaco, and Vanita Gupta that a member of the Federalist Society should be allowed to serve on front-office staff within the Justice Department?

**RESPONSE:** I believe that membership on the Federalist Society would not be a disqualifying factor for an individual to serve on front-office staff within the Justice Department.

- b. If so, does that mean you would allow a member of the Federalist Society to serve on the Civil Rights Division front-office staff?

**RESPONSE: Yes, where such an individual was otherwise determined to be qualified to serve on the Civil Rights Division front-office staff.**

- c. Do you agree with Attorney General Garland, Lisa Monaco, and Vanita Gupta that a member of the Federalist Society should be allowed to be promoted to chief, assistant chief, section head, or any other career supervisory position in the Justice Department?

**RESPONSE: Yes, where such an individual was otherwise determined to be qualified to serve in a supervisory capacity.**

50. *The Hill* reports that some former Trump appointees now hold career positions in the federal government. They reported this because various liberal activist groups are trying to purge these civil servants from the federal payroll. What is your view on removing federal employees who joined the government during the last presidential administration—whether as appointees or career employees—and now hold career positions?

**RESPONSE: As a veteran of the Department of Justice, I can tell you that the Department depends on the service of the career employees who remain at the Department. I will abide by any and all laws and Department regulations that seek to ensure a fair and impartial hiring process.**

51. Former Attorney General Bill Barr designated former U.S. Attorney John Durham as a special counsel to continue his investigation into the Crossfire Hurricane scandal. While the Civil Rights Division Assistant Attorney General is not in charge of these matters, you would be a Senate-confirmed individual, and it will always be possible for you to find yourself supervising something like the Durham investigation perhaps against your personal wishes.

- a. Should the authority to do so fall to you for whatever reason, will you commit to allowing Special Counsel Durham to continue his investigation, unimpeded?
- b. Should the authority to do so fall to you for whatever reason, will you commit to publicly releasing the unredacted version of his report?

**RESPONSE: Because I am not currently an employee of the Department of Justice, the only knowledge I have of Mr. Durham's investigation comes from what has been reported in the media. From my understanding he has been allowed to continue with his investigation, and I have no reason to doubt that decision. I share Attorney General Garland's commitment to "transparency and to explaining Justice Department decision making". I expect any decisions about this investigation would be made by Attorney General Garland, and I would follow his lead on this matter.**

52. Please describe the selection process that led to your nomination from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

**RESPONSE: I was approached in mid-December about potential service inside the U.S. Department of Justice. I participated in a vetting and screening process. After a few weeks, I was informed that I was under consideration for potential nomination to serve as the Assistant Attorney General for the Civil Rights Division. I received a formal offer from President-elect Biden in early January and joined President Biden for an announcement on January 7, 2021 in Delaware.**

53. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?

**RESPONSE: No.**

54. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?

**RESPONSE: No.**

55. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

**RESPONSE: No.**

56. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?

**RESPONSE: No.**

57. When did you first meet Merrick Garland?

**RESPONSE: I first met Merrick Garland briefly during Howard University School of Law's Constitution Day, in 2016. During the event, hosted by Dean Danielle Holley-Walker, remarks were offered regarding the importance of public service.**

58. Please explain, with particularity, the process whereby you answered these questions.

**RESPONSE:** I received questions for the record from members of the Senate Judiciary Committee on April 21, 2021. To answer these questions, I consulted with Department attorneys, conducted my own research, conferred with colleagues to refresh my recollection of certain matters, and for certain questions conferred with counsel for the Lawyers' Committee for Civil Rights Under Law. According to standard procedure the White House also reviewed and cleared the document. I authorized their transmission to the Senate Judiciary Committee on April 26, 2021.

**Senator Josh Hawley**  
Questions for the Record

**Kristen Clarke**  
Nominee, U.S. Assistant Attorney General, Civil Rights Division

1. In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 189 (2012), the Supreme Court stated that “the text of the First Amendment itself . . . gives special solicitude to the rights of religious organizations.” Please describe, in detail, your understanding of the “special solicitude” to which religious organizations are entitled under the First Amendment.

**RESPONSE: If confirmed as a Department of Justice official, I will seek to ensure that the Department follows Supreme Court precedent as the law of the land.**

2. In *Tandon v. Newsom*, No. 20A151, 2021 WL 1328507 (U.S. Apr. 9, 2021), the Supreme Court stated that “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise. . . . It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue.” If you are confirmed as Assistant Attorney General, do you intend to faithfully enforce this precedent?

**RESPONSE: If confirmed as a Department of Justice official, I will seek to ensure that the Department follows Supreme Court precedent as the law of the land.**

3. If you are confirmed as Assistant Attorney General, do you intend to faithfully enforce the Religious Freedom Restoration Act as it is written today?

**RESPONSE: If confirmed, I will endeavor to fully and fairly enforce all federal laws within my purview.**

4. If you are confirmed as Assistant Attorney General, would you independently recommend or advise that the Department of Justice support legislative or executive actions that would alter in any way the Religious Freedom Restoration Act’s protection for Americans of all faiths?

**RESPONSE: Religious freedom is a founding freedom of the United States protected by the First Amendment of the Constitution and federal laws, including the Religious Freedom Restoration Act. If I were confirmed and asked to consider an amendment to a statute, including the Religious Freedom Restoration Act, I would carefully review all of the relevant legal and policy issues, and consult Justice Department leaders and career**

staff, to help formulate the Department's position.

5. In publicly accessible tweets from July 16, 2019, you lauded the late Justice John Paul Stevens for "show[ing] solidarity w/ those fighting for gun control" by calling for the repeal of the Second Amendment. Do you believe the Second Amendment protects an individual right to keep and bear arms?

**RESPONSE: *Heller* is established precedent that the Supreme Court has repeatedly reaffirmed. The Department of Justice's litigating positions must be guided by existing law and precedent like *Heller*. I have not worked on the Second Amendment during my career. I have not called for repealing the Second Amendment but did share on social media an op-ed written by the late Justice John Paul Stevens on the subject.**

6. If you are confirmed as Assistant Attorney General, what steps do you intend to take to protect the civil rights of lawful gun owners conferred by the Second Amendment?

**RESPONSE: The work of the Civil Rights Division generally does not address Second Amendment issues. The Department of Justice's litigating positions must be guided by existing law and precedent, including the Supreme Court's decision in *Heller*.**

7. In a 2020 article titled in part "Defund the Police—But Be Strategic," you stated that the federal government should set "diversity and inclusion benchmarks" for police departments. What "diversity and inclusion benchmarks" were you referring to?

**RESPONSE: President Biden has made clear that, under his Administration, the federal government should work to affirmatively advance civil rights, racial justice, and equal opportunity. I share his commitment. Our country is at its best when we lift up our own diversity. If confirmed as Assistant Attorney General, I look forward to working to achieve these goals generally.**

8. In that article, you described "the need to truly reform policing in our country in ways that can produce racially just outcomes for communities." Do you believe that anything other than statistical parity in arrest and conviction rates is *prima facie* evidence of racial bias in the criminal justice system?

**RESPONSE: Attorney General Garland testified that "there is discrimination and widespread disparate treatment of communities of color and other ethnic minorities in this country." I agree with his view and believe that the Civil Rights Division's role is to follow the facts and the law to identify if and when there are violations of our federal civil rights laws.**

Questions for the Record for Senator Thom Tillis  
for Kristen Clarke

1. You said religion is often used as a “pretext”; either to discriminate or to ignore COVID restrictions. Following the Supreme Court’s order blocking New York’s emergency COVID restrictions on houses of worship, Ms. Clarke tweeted, “This is a newly configured Supreme Court, one w/ Justice who place religious freedom above ALL else even in the context of a deadly pandemic.”
  - a. What did you mean that religion is a pretext to discriminate or ignore COVID restrictions.
  - b. If confirmed you will have oversight of the DOJ division responsible for protecting individuals’ religious liberties, how can they trust you to do this given your previous statements?

**RESPONSE: As I testified, my focus commenting on that case was about how we protect lives amid a deadly pandemic. Religious discrimination is always wrong and it is something that I have fought throughout my career. I have extensive experience fighting to protect religious liberty. If I am confirmed, I will continue to stand up for religious liberty and fight religious discrimination, and I will follow relevant laws and Supreme Court precedents.**

2. You wrote an opinion piece titled “I Prosecuted Police Killings. Defund the Police – But Be Strategic.” You acknowledged that defund the police can mean different things to different people.
  - a. What does defund the police mean to you?

**RESPONSE: I do not support defunding or abolishing the police. As a former federal prosecutor and state law enforcement official, and in my work at the Lawyers’ Committee for Civil Rights Under Law, I have worked with the police throughout my career to successfully prosecute federal and state civil rights cases, and to develop policies to improve police practices. I am proud to have endorsements or the support of law enforcement organizations or representatives of the Major Cities Chiefs Association, National Association of Police Organizations, International Association of Chiefs of Police, National Organization of Black Law Enforcement Executives, National Association of Women Law Enforcement Executives, Hispanic American Police Command Officers Association, Women in Federal Law Enforcement, and over 40 current and former police chiefs and sheriffs from across the country. I am also proud to be supported by numerous crime victim advocates and domestic violence organizations, as well as numerous former Justice Department officials and current and former State Attorneys General.**

**Through my work, I appreciate the challenges today’s law enforcement officers face. I support finding strategies to ensure that law enforcement can carry out their jobs more safely and effectively, and channeling resources to emotional health treatment and other severely under-resourced areas. Furthermore, I support President Biden’s commitment of**

**\$300 million to COPS to help ensure that police have more resources to do their jobs. With more resources, we can work to ensure that they can carry out their roles more effectively.**

3. One thing you suggested is that the Federal government could refuse to provide funding to some police departments with a long and ongoing history of racial disparities.
  - a. Given your extensive experience, what departments do you think specifically the federal government should refuse to provide funding to right now?
  - b. Do you oppose any other unions or just police unions? Why or why not?

**RESPONSE: The Department of Justice’s decisions concerning investigations and prosecutions, including whether a recipient of federal assistance is found to have discriminated, must be based on a careful review of the relevant facts and laws, and must be made in consultation with other Department leaders and career lawyers. Throughout my career I have worked hard to follow the facts and the law, and I will bring that commitment to the Civil Rights Division if confirmed. I will ensure enforcement matters are based solely on fair and careful application of the law to the facts.**

**I do not oppose police unions or unions generally. I have discussed particular aspects of some collective bargaining agreements that may inhibit reform.**

4. In another opinion piece you wrote that police unions are part of the problem when it comes to police reform.

You wrote: “For too long, powerful police unions have prioritized officers' job security above all other interests. While many rightfully support the labor movement, especially in low-income job sectors that are rife with racial and gender discrimination, more Americans need to recognize that police officers are not like other workers. They embody the state's power to arrest, jail and even kill civilians. We must hold police to a higher standard. Instead, we have almost no consistent standards at all, thanks in large part to the political power of police unions.”

- a. Can you provide specific examples of police unions prioritizing job security over all other interests?
- b. Which police unions specifically have placed job security above all else?
- c. Do you feel like this is unique to police unions or do you believe all unions place their members job security above all else?

**RESPONSE: As a former federal prosecutor and state law enforcement official, and in my work at the Lawyers’ Committee for Civil Rights Under Law, I have worked with the police throughout my career to successfully prosecute federal and state civil rights cases, and to develop policies to improve police practices. There is tremendous common ground between the civil rights and law enforcement communities. Finding this common ground requires the willingness and ability to engage with the law enforcement community, including with police unions. Our nation has been engaged in robust dialogue around policing reform. I have discussed aspects of some collective bargaining agreements that**



**may inhibit reform.**

5. As the economy re-opens following the pandemic, it is anticipated that the number of Title III ADA lawsuits will once again increase. While ADA lawsuits declined in 2020 as compared to 2019, there have already been a record number of ADA cases filed during January of this year. One law firm that tracks ADA litigation trends has noted that “[i]n January 2021, 1,108 cases were filed – *the most ever in a single month....*” The non-partisan Judicial Conference noted in 2018 that “ADA lawsuits have grown so dramatically in recent years that ADA cases accounted for 10,773 filings, which amounted to 4 percent of the total civil docket and 27 percent of civil rights cases.”

If confirmed, what specific steps will you take reduce the proliferation of Title III ADA litigation?

**RESPONSE: In enacting Title III of the Americans with Disabilities Act, Congress sought to address persistent discrimination against individuals with disabilities in public accommodations and authorized both the Attorney General and private litigants to file enforcement actions. If confirmed, I would work with the Department’s career attorneys and subject matter experts to ensure that federal resources are being used appropriately to address the most serious violations.**

6. I’ve heard from many small business owners who complain that Title III ADA lawsuits are often so vague that defendants are unable to identify an alleged violation and therefore unable to remedy such violations.
  - a. What steps will you take to address these concerns?
  - b. Do you agree that specificity in Title III ADA lawsuits is beneficial to all individuals to ensure violations are corrected?
  - c. Would you support an effort by the courts or Congress to require that private Title III ADA lawsuits provide greater detail, such as would be required under Rule 9(b) of the Federal Rules of Civil Procedure?

**RESPONSE: All complaints filed in federal courts by the Department of Justice should be clear, are subject to the requirements of the Federal Rules of Civil Procedure, as well as the applicable Supreme Court precedent on pleading standards, and are subject to dismissal, and possibly sanctions, if these requirements are not met. If confirmed, I will work to ensure that complaints filed by the Civil Rights Division satisfy all applicable court rules, laws and precedent and meet the high standards expected of the Department of Justice. It is my understanding that the Justice Department through its Office of Legislative Affairs often provides technical assistance on proposed legislation. If confirmed, I would be happy to work through the proper Department channels to provide feedback on any legislative proposals.**

7. Recently, the 11<sup>th</sup> Circuit Court of Appeals, in conflict with the 9<sup>th</sup> Circuit Court of Appeals, ruled that websites are not covered by Title III of the ADA. Could you provide

your legal analysis for whether websites are “places of public accommodation” under Title III of the ADA? This circuit split highlights the uncertainty business owners face regarding the ADA and websites.

- a. Are websites places of public accommodation and therefore covered by the ADA?
- b. If confirmed, what steps will you take to provide clarity and guidance to employers so they know what standards, if any, they must meet and therefore benefit individuals covered by the ADA.

**RESPONSE:** As you note, this is a complicated and emerging area of the law. Any determination whether a website is a public accommodation must be based on a careful examination of the facts, law, and precedent. In general, it is important for people to understand their rights and for covered entities to understand their obligations under the law. If confirmed, I would work closely with career officials in the Justice Department and community stakeholders, including small businesses and others in the business community, to consider whether any Department action is necessary in this area and, if so, to develop an appropriate response, and I would welcome the opportunity to work with your office on this issue.