Nomination of Brett Talley to the
U.S. District Court for the Middle District of
Alabama Questions for the Record
Submitted October 24, 2017

QUESTIONS FROM SENATOR FEINSTEIN

1. Please respond with your views on the proper application of precedent by judges.

   a. When, if ever, is it appropriate for a district court to depart from Supreme Court or the relevant circuit court's precedent?

   It is never appropriate for a district court to depart from or fail to apply faithfully the relevant Supreme Court or circuit court precedent.

   b. When, if ever, is it appropriate for a district court judge to question Supreme Court or the relevant circuit court's precedent?

   District court judges are bound to follow Supreme Court and circuit precedent and should do so faithfully. I can imagine situations in which it might be appropriate for a district court judge to raise questions about a binding precedent, such as when a more recent Supreme Court precedent has undermined the analysis supporting the relevant circuit court precedent or raises a particular practical difficulty for a district judge. But the judge must apply all relevant, binding precedent without fail.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A textbook on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. The book explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

   a. Do you agree that *Roe v. Wade* is "super-stare decisis"? "superprecedent"?

   For a district court judge, all Supreme Court precedent is "superprecedent," entitled to "super-stare decisis" respect. A district judge has no discretion to deviate from Supreme Court precedent.

   b. Is it settled law?

   Roe v. Wade is settled as precedent of the Supreme Court and binding on all lower court judges.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-

sex couples the right to marry.

a. Is the holding in *Obergefell* settled law?

Please see the response to No. 2(b) above.

b. On Friday, June 30, the Texas Supreme Court issued a decision in *Pidgeon v. Turner* which narrowly interpreted *Obergefell* and questioned whether states were required to treat same-sex couples equally to opposite-sex couples outside the context of marriage licenses. The Texas Supreme Court stated that "The Supreme Court held in *Obergefell* that the Constitution requires states to license and recognize same-sex marriages to the same extent that they license and recognize opposite-sex marriages, but it did not hold that states must provide the same publicly funded benefits to all married persons, and… it did not hold that the Texas DOMAs are unconstitutional." Is this your understanding of *Obergefell*?

I am only generally familiar with *Obergefell* and its holding, but if confirmed, I would be bound by the rulings of the United States Supreme Court on issues of federal law, not the Texas Supreme Court, and I would apply *Obergefell* faithfully.

4. In Justice Stevens's dissent in *District of Columbia v. Heller* he wrote: "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

a. Do you agree with Justice Stevens? Why or why not?

As a judicial nominee, it would be inappropriate for me to offer my personal views on any particular Supreme Court opinion. If I am confirmed, I will apply *Heller* and all other Supreme Court and circuit precedent faithfully.

b. Did *Heller* leave room for common-sense gun regulation?

As I said at my hearing, the Court in *Heller* stated, "[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *District of Columbia v. Heller,* 554 U.S. 570, 625–26 (2008).

c. Did *Heller,* in finding an individual right to bear arms, depart from

decades of Supreme Court precedent?

In *Heller*, the Supreme Court asserted that "nothing in our precedents" foreclosed the holding in the case, concluding, rather, that the question had never been squarely addressed as it "did not present itself." *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008). As noted above, it would be inappropriate for me as a district court judicial nominee to offer a personal opinion about the correctness of that reasoning.

5. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

   a. Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?

   If I am confirmed, my personal opinions will not influence my role as a district court judge, and I would apply *Citizens United* and all other Supreme Court and circuit precedent faithfully.

   b. What is the right way to balance individual's First Amendment rights when corporations can, in effect, silence an individual through monetary spending?

   Please see the response to No. 5(a) above. It would be inappropriate for me, as a judicial candidate, to weigh in on issues that are properly within the role of the legislative branch.

6. You graduated from law school only ten years ago, and you have spent only a small portion of time since then practicing law. In addition, according to your Questionnaire, you have never tried a case. Your overall qualifications and preparation for becoming a lifetime- appointed federal judge are of concern to me, especially since the American Bar Association has not yet issued a formal rating on your nomination.

   a. How many times have you appeared in a federal district court on behalf of a client?

   While the Deputy Solicitor General of Alabama, I often had occasion to represent Alabama's interests in challenging actions taken by the federal government. In one case in particular, Alabama led an 18-state coalition in a case I filed in the Southern District of Alabama, challenging federal regulations, *Alabama, et al. v. National Marine Fisheries Service, et al.*, No. CV 16-00593 (S.D. Ala. Nov. 29, 2016).

   b. How many times have you argued a motion in federal district court on

behalf of a client?

Motions in federal court are often argued on the briefs, rather than in person. This is particularly true in matters involving constitutional challenges or challenges to federal regulations. Typically, these actions would begin with a challenge to the states' standing, followed by a motion for preliminary injunction staying the regulation. If the states were successful in establishing standing and gaining a preliminary injunction, the case would move on to a summary judgment stage on the merits. Two representative cases where I was significantly involved with the motions briefing are the states' challenge to the Waters of the United States rule and the states' challenge to the Clean Power Plan.

In addition, the Office of Solicitor General is responsible for defending laws enacted by the Alabama Legislature. During my time, a number of such laws were challenged. In those cases, the plaintiffs moved for a preliminary injunction, which the state opposed.

c. How many times have you participated in hearings in federal district court on behalf of a client?

To my recollection, during my time as Alabama's Deputy Solicitor General, I participated as part of the legal team in one hearing in federal district court in the Middle District of Alabama and a number of telephonic hearings in the Northern District of Alabama.

d. How many appeals have you argued in federal appellate court?

I have argued three cases before the Eleventh Circuit Court of Appeals and one case before the Alabama Court of Criminal Appeals. In addition, I have second-chaired a number of arguments before both the Eleventh Circuit and the Alabama Supreme Court.

e. Had you made your interest in being considered for a federal judgeship known to anyone—including at the Department of Justice, or the White House—before Senator Shelby's office reached out to you in June 2017 (per your response to Question 26 of your Questionnaire)?

I have had casual conversations with friends and co-workers about serving in the judiciary over the years, and at one point I was asked, along with several others, to provide a resume to the White House for possible future consideration. To my knowledge, none of these conversations played any role in my consideration.

Why do you believe you were nominated to be a federal judge?

To my knowledge, I was nominated on the basis of a recommendation made by

Senators Shelby and Strange.

f. What steps are you undertaking to prepare to assume the responsibilities of a federal district court judge, if you are confirmed?

I am blessed to have two of the finest judges in the country as mentors—Judges Coogler and Dubina, for whom I have clerked for two years and one year, respectively. I have been in touch with both of them, seeking their advice and guidance on the best way to proceed, in the event that I am confirmed. I have arranged with Judge Coogler to shadow him in his work, to reacquaint myself with the routine of a district court judge and to learn best practices and procedures. The Administrative Office of the Courts also provides a wealth of material for judicial candidates to study, and I intend to study assiduously the Federal Rules of Civil Procedure, Rules of Evidence, the Sentencing Guidelines, and treatises thereon.

7. Additionally, according to your Questionnaire, you have limited experience with criminal law.

a. Specifically, what steps are you undertaking to prepare yourself to hear criminal cases?

Federal judges come to the bench from a variety of legal backgrounds, each with something to learn and something to contribute. My work in the Alabama Attorney General's office often involved criminal matters, including the balancing of aggravating and mitigating factors, allegations of violations of *Brady* and *Batson*, and allegations of coerced confessions, improperly introduced 404 evidence, and other prosecutorial misconduct. I also worked on numerous AEDPA and habeas corpus actions that involved underlying issues of criminal procedure. To supplement this experience, I intend to study the relevant areas of the law and work with experts—judges, prosecutors, and defense attorneys—to better understand the challenges and important procedural requirements of criminal law.

b. How will you familiarize yourself with the requirements of the Speedy Trial Act, a defendant's right to counsel, a defendant's right against self- incrimination, prosecutors' obligations under *Brady v. Maryland* and *Giglio v. United States*, and other critical aspects of criminal proceedings?

Please see the response to No. 6(f) and 7(a) above.

8. A federal district court judge's responsibilities are not limited to trials but also include making decisions regarding sufficiency of evidence and procedural propriety, such as reviewing search and arrest warrant applications, monitoring various electronic evidence gathering methods, or determining pre-trial detention

and release conditions.

a. How familiar are you with the procedural and substantive rules that govern these various pre-trial hearings and investigative tools?

Please see the response to No. 6(f) and 7(a) above.

b. If you have no experience with these critical issues, how do you plan to educate yourself to understand these issues before you preside over any such matter?

Please see the response to No. 6(f) and 7(a) above.

9. District court judges often say that the most difficult aspect of their job is sentencing defendants. Judges also comment that one of the most complicated legal areas are decisions involving the United States Sentencing Guidelines. How do you plan to familiarize yourself with the Guidelines, and, more importantly, how do you plan to prepare yourself to sentence criminal defendants?

During my two years clerking for Judge Coogler, I participated in a number of sentencing hearings and was able to witness and learn how a federal district court judge approaches the difficult job of sentencing defendants, including how he uses the sentencing guidelines and the probation officers' expertise. If fortunate enough to be confirmed, I intend to re-review the sentencing guidelines, review relevant precedent and treatises on the subject, and observe as many sentencing hearings as possible before I begin to conduct such hearings in my courtroom.

10. While you worked in the Alabama Attorney General's Office, you filed a brief on behalf of Alabama and several other states in a Ninth Circuit case, *Peruta v. San Diego*, regarding the constitutionality of California law governing the concealed carry of firearms. In this case, several individuals who wished to carry concealed firearms in San Diego County challenged the county's definition of "good cause" as unduly restrictive in violation of their Second Amendment right to bear arms and the Supreme Court's decision in *Heller*. Your brief argued that San Diego's definition of "good cause" prevented most California citizens from carrying concealed weapons and that that definition, coupled with California's ban on the open carry of firearms, violated the Second Amendment by effectively preventing all public carry of firearms. The en banc Ninth Circuit disagreed, holding that San Diego's definition of "good cause" was constitutional because there is no Second Amendment right to concealed carry of a firearm.

a. Why did the Alabama Attorney General's Office decide to take a position in this case?

At the time, I was the Deputy Solicitor General, and it was the decision of the Attorney General whether to take positions in cases.

b. Why did you believe it was a worthwhile expenditure of the Alabama

taxpayers' limited resources to challenge the gun control legislation adopted by another state, in a circuit that does not include Alabama and does not have jurisdiction over Alabama?

It was the responsibility of the Attorney General to decide which challenges were appropriate.

c. Please identify any other briefs you filed in cases challenging the constitutionality of another state's laws, and note whether the state whose law was being challenged was in the Eleventh Circuit or not.

I do not recall any other briefs I filed challenging a state's laws. I do recall a brief supporting California's use of a procedural bar in criminal cases, which the Ninth Circuit had found California could no longer apply. That brief was joined by all the states in the Ninth Circuit and cited by the Supreme Court in a per curiam opinion reversing the lower court's ruling. *Johnson v. Lee*, 136 S. Ct. 1802, 1804 (2016). During my time as Deputy Solicitor General, the State of Alabama would also have joined any number of other briefs in cases challenging the constitutionality of other states' laws when the Attorney General of Alabama determined that it was in the State's interest to do so. *See, e.g.*, Brief of West Virginia and 43 Other States in Supp. of Pet., *Franchise Tax Board of California v. Hyatt*, 136 S. Ct. 1277 (2016) (arguing that Nevada's law allowing private citizens to sue other States in its courts without the State's consent violated the Constitution's structure).

11. In several posts on your "Government in Exile" blog, you suggested that the right to bear arms is an important protection against the government. For example, on February 5, 2013, you wrote, "an armed revolution truly is the last defense against tyranny." (*Gun Control and Japanese Internment*, 2/5/13)

    In a different post, you printed a reader comment that said, "[w]e will have to resort to arms when our other rights—of speech, press, assembly, representative government—fail to yield the desired results. A gun owner may consider his weapon to be his first line of defense against a common criminal, but it must be his last defense against the uncommon criminal that an illegitimate government would become." You responded, "I agree with this completely." (*Practicality and the Right to Bear Arms*, 2/9/13)

    a. Do you still agree with these statements?

    If I am confirmed, my personal views on this or any other issue will have no bearing on how I would rule in case. Rather, I would be duty bound to apply relevant Supreme Court and circuit precedent to the facts before me.

    At the time, I understood the commenter to be reiterating that "resort to arms" would be the absolute last resort against a truly tyrannical government, after the appropriate exercise of our constitutional rights to speak, including in the press; to assemble to petition our government for a redress of grievances; and to vote for

new representatives. I reinforced the point that the use of arms against a government, though certainly contemplated by the Framers who took up arms in favor of American independence, should be a last resort with the next sentence: "We are certainly far from that place today, and I don't think any situation in American history–with the possible exception of slavery–has called for armed rebellion against the state."

b. Please explain when you believe it is appropriate for American citizens to participate in an armed uprising against the government.

Please see the response to No. 11(a).

12. In another post, you wrote that you believed that lawmakers who favor gun-control measures are "not playing straight with the American people and [are] not negotiating in good faith." You also said that you did not "trust" them on the issue. (*Are Any Restrictions on Gun Ownership Legitimate?*, 1/15/13)

a. Could you please elaborate on these statements?

If I am confirmed, my personal views on this or any other issue will have no bearing on how I would rule in case. Rather, I would be duty bound to apply relevant Supreme Court and circuit precedent to the facts before me.

At the time, I was attempting to point out that a lack of trust between people on both sides of the gun-control issue has prevented the two sides from reaching compromise positions. I pointed out that your view was not based on any nefarious purpose, but on an attempt to prevent the kinds of tragedies that you have experienced in your own life. I hoped that fostering understanding of the two sides of the issue would help alleviate the lack of trust that I identified.

b. If you are confirmed, how will litigants appearing before you in support of gun-control laws—including the government—be assured that you can be impartial on this issue?

As a judge, I would be duty-bound to set aside any personal views on any issue that would come before me, faithfully applying the precedents of the Supreme Court and the circuit. I pledge to do so.

13. In a different blog post, you encouraged your readers to join the National Rifle Association. You wrote, "Today I pledge my support to the NRA; financially, politically, and intellectually. I ask you to do the same. Join the NRA. They stand for all of us now, and I pray that in the coming battle for our rights, they will be victorious." (*A Call to Arms: It's Time to Join the National Rifle Association*, 1/26/13) Yet at your hearing, you refused to commit to recusing yourself from cases involving the NRA or where the NRA had taken a position.

a. You said at your hearing that you would "hate to prejudge any case that

came before me, even a recusal question. Sitting here today, I feel no reason that I could not rule fairly in a case involving weapons." But 28 U.S.C. § 455(a) requires a judge to recuse himself or herself "in any proceeding in which his impartiality might reasonably be questioned." Do you agree that judges are obligated to recuse in cases where their impartiality might reasonably be questioned by an objective observer?

I agree that 28 U.S.C. § 455(a) requires a federal judge to "disqualify himself in any proceeding in which his impartiality might be questioned." The next subsection lists additional grounds for disqualification. *See* 28 U.S.C. § 455(b). If fortunate enough to be confirmed, I would apply the recusal statute, along with the precedents interpreting it and any applicable canons of judicial ethics, in deciding whether to disqualify myself from a particular case.

b. Do you agree that the recusal standard for federal judges is <u>not</u> simply whether a judge personally "feels" that he or she could be objective?

Please see the response to No. 13(a).

c. Given what you have written about the NRA, under what circumstances do you believe your impartiality would <u>not</u> reasonably be questioned by an objective observer in a case that involved a legal issue on which the NRA had taken a position, or which involved the NRA as a party?

Please see the response to No. 13(a).

14. Again, in January 2013, you wrote, "Today I pledge my support to the NRA; financially, politically, and intellectually. I ask you to do the same. Join the NRA. They stand for all of us now, and I pray that in the coming battle for our rights, they will be victorious." (*A Call to Arms: It's Time to Join the National Rifle Association*, 1/26/13). Yet despite pledging your support to the NRA and exhorting your blog readers to join the NRA in January 2013, according to Question 11a of your Senate Questionnaire, you did not actually become a member of the National Rifle Association until 2016.

a. Why did you urge your readers to join the NRA and then decline to do so yourself in 2013?

Shortly after publishing that post and others, I was offered a position with Senator Rob Portman. Because I understood that in that role I would be representing his views and not my own, I put aside the blog and the positions I had taken in it for the time-being.

b. What finally prompted you to become a member of the NRA in 2016?

I do not recall precisely why I joined at that time, other than that I had completed

my service with Senator Portman and had intended to become a member for some time.

15. At your hearing, you stated that with respect to your blog, "one of the things I was trying to do was generate discussion… because I wanted people to be able to use my blog to discuss these issues, to come together, find common ground." You subsequently told Senator Blumenthal that you were trying to offer "constructive dialogue." Below is your blog post "A Call To Arms: It's Time to Join the National Rifle Association." **Please explain how any of these statements were intended to help people "come together" or "find common ground," or how this blog post offered "constructive dialogue."**

I rarely join lobbying groups, and I almost never tell other people that they should do so. But desperate times, my friends.

It has become evident to me—as I am sure it has become obvious to you—that the President and his democratic allies in Congress are about to launch the greatest attack on our constitutional freedoms in our lifetime. *The coming fight over gun restriction is the latest battle in the long war that activists have raged over the last several decades against our Second Amendment rights. The object of that war is to make guns illegal, in all forms.*

In the world they imagine, only the state and its officers would be permitted to own and carry a weapon.

It is an outrage that these activists have exploited the tragedy in Connecticut for their own ends, *and it is sad that the President has decided to forgo an opportunity to reform our gun control regulations, so many of which only burden law abiding citizens while doing nothing to keep guns out of the hands of violent criminals.*

The President will no doubt launch quite the political campaign to gain support for his policies, but make no mistake—this is only the first action of many against our right to bear arms. ***In the President's mind, and in the mind of liberals in Congress, there is no such thing as a good gun, and there is no such thing as a good gun owner.***

These politicians either do not know or do not care that an armed, responsible citizenry is the last and greatest bulwark against tyranny that a nation can have. They certainly do not care about our right to bear arms, enshrined in the Constitution and reaffirmed by recent Supreme Court rulings. They do not appreciate that in the United States of America, the state does not have a monopoly on force. Rather, in our country, the common man is elevated as an equal with the state, a citizen that is as entitled to carry a weapon as any police officer or soldier.

For thousands of years of human history, it was not so. From the Samurai of Japan to the knights of the feudal order, it was the nobility–the powerful and the high born–who were permitted to bear the sword, not the commoner. But here, there is no nobility, there are no commoners. At least, until this point in our history.

If President Obama and his allies have their way, they take yet another step in

rendering us dependent on the government, in this case for our safety and that of our families—and ultimately for our freedoms.

This attack cannot stand.

Fortunately, there is a group dedicated to the protection of our Second Amendment Rights—the National Rifle Association. Today I pledge my support to the NRA; financially, politically, and intellectually. I ask you to do the same. Join the NRA. They stand for all of us now, and I pray that in the coming battle for our rights, they will be victorious.

This post and others were meant to generate discussion and spike interest, drawing people to the blog who might not agree with it. Once people did post and disagree, I elevated the post to the front page and engaged in a respectful, constructive discussion.

16. Internet searches show that you maintain a Twitter account and that you posted publicly from that account in the past. However, the account is currently private.

    a. When did you make your Twitter account private?

    I made my Twitter account private some time before my nomination. I do not recall the date.

    b. Question 12a of the Senate Judiciary Questionnaire asks judicial nominees to "List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee." The tweets that you made while your account was public, and <u>anyone</u> could have read them, qualify as such material. Why were these tweets not published to the Committee as 'material published only on the Internet'?

    That portion of the question refers to the type of substantive written materials that are listed preceding it. Tweets, which are fewer than 140 characters in length, are not of that nature.

    c. You stated at your hearing, "Since I have been nominated, I have made no political tweets." You were nominated less than two months ago—on September 7, 2017. Please share with the Committee the "political tweets" you wrote since you began serving as a Deputy Assistant Attorney General in the Trump Administration, and the date you made your Twitter account private.

    Please see the response to Nos. 16(a) and 16(b) above.

17. The following tweets appear to have written been authored from your Twitter account.

"Hillary Rotten Clinton might be the best Trumpism yet."

"@DWSTweets' [Debbie Wasserman-Schultz's] email scandal didn't put our nation at risk, but she resigns. Meanwhile, @HillaryClinton is on her way to the nomination."

"The press cares when you lie to the American people. Unless you are @HillaryClinton #LochteGate"

"The worst part of #NeverTrump is that they are helping Hillary win the election. Their self-righteousness while doing it is a close second."

You retweeted a person who wrote "Must say: fact that Bernie fans at DNC now chanting the same "LOCK HER UP!!" refrain from RNC represents single greatest Trump-troll ever."

You retweeted Laura Ingraham when she wrote "When your kids & grandkids ask you what you did to defeat the Clinton mob, what will you tell them?"

You retweeted a person who wrote "There are two choices: Hillary and 5,000 liberal political appointees or @RealDonaldTrump and 5,000 conservative political appointees."

Additionally, you have written several opinion pieces for CNN.com. During last year's presidential election, you wrote an article for CNN which stated, "[i]f you support activist justices on the Supreme Court, if you support late-term abortion on demand, if you support open borders and amnesty, if you want a continuation of a foreign policy that has helped plunge the Middle East into war-torn chaos, if you want four more years of the past eight years, Hillary Clinton is your candidate." You also claimed that "Hillary Clinton has committed acts that would have resulted in the prosecution of ordinary citizens." (Who Won the Debate?, CNN.com, 10/20/16).

a. **Given the extent—and the vehemence—of your prior political commentary, what assurances or evidence can you give the Committee and future litigants who come before you that you will be fair and impartial to everyone who appears before you, if confirmed—including towards those whose political views differ from yours?**

   Many federal judges, nominated by Presidents of both parties, engaged in political commentary before they joined the federal bench. But upon taking the judicial oath of office, they become bound to "faithfully and impartially discharge and perform all the duties incumbent" upon them as federal judges, 28 U.S.C. § 453, and to comply with the canons of judicial ethics for federal judges, which provide that judges "should not engage in . . . political activity," Canon 5(C), Code of Conduct for United States Judges. If fortunate enough to be confirmed, I would fully and faithfully comply with these obligations.

   I would also note that, throughout my career, I have worked fairly with

people who hold views across the political spectrum, including over the last year with members of the Judiciary Committee. I believe that experience should assure this Committee and future litigants that I would approach each case before me fairly and impartially.

Do you believe these tweets and your online commentary inspire confidence in your temperament and impartiality as a federal judicial nominee?

Please see the response to No. 17(a) above.

b. Do you believe there are any prior political statements that ought to be disqualifying for a federal judicial nominee?

Please see the response to No. 17(a) above.

18. Shortly after the 2016 election, you wrote an article accusing Democrats of "playing the race card" to explain the election results and argued that "[b]laming racism for a lost election is nothing new for some on the left." (*Democrats, the Party Who Cried Racist*, CNN.com, 12/1/16) **Please explain what you meant by these statements.**

The purpose of this editorial was to defend then-Senator Sessions from claims I thought were unfounded and to note that using unfounded allegations of racism for political ends would make it more difficult to address racism in our country.

19. According to your questionnaire, you started working as a political appointee at the U.S. Department of Justice in January 2017. In February 2017, you wrote an op-ed titled "What the pundits got wrong about Luther Strange," in which you wrote "General Strange is now Senator Strange, and we in Alabama are lucky to have him. The decision to elevate him to that position was the best decision our governor has made."

a. Did you consult with Department of Justice ethics officials regarding whether this op-ed complied with the Hatch Act before publishing it?

I did.

20. Last November, you wrote an article for CNN arguing that President Trump should pick Judge William Pryor to fill the Supreme Court seat vacated by Justice Scalia. You wrote, "Pryor is a conservative; he is a pre-eminent defender of federalism, the separation of powers, and deciding cases based on the original meaning of the Constitution." You also said that, "[f]or too long, conservatives have gone for the 'stealth' pick, nominations of jurists with little or no judicial track record, who may or may not adhere to a conservative judicial philosophy." (Who Donald Trump Should Appoint to the Supreme Court, CNN.com, 11/15/16) You are currently the Deputy Assistant Attorney General in charge of judicial nominations at the Justice Department's Office of Legal Policy.

b. It seems fair to assume that you would not hold other judicial nominees to a standard you did not meet yourself. What do you look for in judicial nominees to ensure that they adhere to a conservative judicial philosophy?

The article was an advocacy piece urging the appointment of Judge Pryor to the Supreme Court. As Deputy Assistant Attorney General, my duty is to facilitate the President's selection of candidates.

c. You told Senator Blumenthal that you participate in interviews for potential judicial nominees—that you had participated in perhaps 50 different candidate interviews. You said that you asked nominees questions about "temperament, and following the law and following precedent." What kinds of questions to you ask about precedent?

Although it would be inappropriate for me to reveal confidential information learned through my official duties, there are no litmus tests. Candidates are generally asked questions to ascertain that they understand the duty of a lower-court judge to follow precedent, which is the foundation of the rule of law in this country.

d. Do you ask nominees specifically about their views on the Supreme Court precedents *Roe v. Wade, Planned Parenthood v. Casey, Whole Women's Health v. Hellerstadt,* or any other case involving reproductive rights?

Please see the response to No. 20(c).

e. Do you ask nominees specifically about their views on *District of Columbia v. Heller,* or any other case involving the Second Amendment?

Please see the response to No. 20(c).

21. Please describe with particularity the process by which these questions were answered.

I received these questions from your office through the Office of Legal Policy on October 24. I drafted answers to them and returned them to DOJ, received suggestions, and then finalized them for submission.