

Senator Chuck Grassley, Ranking Member
Questions for the Record
Ms. Vanita Gupta
Nominee to be Associate Attorney General of the United States

1. You applauded Walmart for prohibiting the sale of handguns in its stores.
 - a. Do you believe that all major retailers should do the same? Why or why not?
 - b. Would you support pharmacies prohibiting the sale of emergency contraception? Why or why not?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

2. In your hearing you described viewpoint discrimination as “anathema.”
 - a. Is it wrong for a retailer to refuse to sell a book relating to a public controversy because it disagrees with the viewpoint the book espouses?
 - b. What if the retailer has 50% market share?
 - c. What if the retailer has more than 75% market share?

RESPONSE: Strong enforcement of our nation’s antitrust laws is critical, consistent with First Amendment principles to preserve our marketplace of ideas. If confirmed, I will be committed to promoting strong competition policy and upholding the First Amendment’s protections for all Americans.

3. In 2017, the Trump administration formally discontinued and repudiated Operation Choke Point. This program, which involved the Justice Department and other federal agencies, pressured banks against transacting with certain industries which, while legal and financially viable, were considered to pose a “reputation risk” to banks. The Obama/Biden administration has been accused of using Operation Choke Point to target disfavored business sectors, including makers and sellers of firearms and ammunition. More recently, the Office of the Comptroller of the Currency issued a rule that would prohibit banks from discriminating against lawful, financially sound customers for ideological or political reasons.

Does the Justice Department have a valid role in telling banks which lawful and financially viable industries they should serve? If not, would you pledge as Associate Attorney General not to repeat the tactics of Operation Choke Point?

RESPONSE: I had no involvement with Operation Choke Point, but I agree with Attorney General Garland’s testimony that laws should be enforced without regard to politics or partisanship.

4. There are many gun control proposals being proposed or introduced in Congress, including licensing and registration schemes, bans on popular types of firearms, and repeal of the Protection of Lawful Commerce in Arms Act.
 - a. Do you support the enactment of additional federal gun control laws? If so, which proposals do you support?
 - b. Do you believe any proposal goes too far in infringing Second Amendment rights?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

5. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

6. According to press reports, the Biden administration recently reactivated a “migrant child facility” that was open “for only a month in summer 2019” during the Trump administration.¹ The practice of keeping children in these facilities was routinely criticized as “kids in cages” by Democrats and members of the media. Indeed, in 2007, while you were a Staff Attorney at the ACLU, you sued Michael Chertoff for detaining

¹ Siliva Foster-Frau, *First migrant facility for children opens under Biden*, Washington Post (Feb. 22, 2021), available at https://www.washingtonpost.com/national/immigrant-children-camp-texas-biden/2021/02/22/05dfd58c-7533-11eb-8115-9ad5e9c02117_story.html.

children at the border, noting that “[t]here is simply no justification for imprisoning innocent children who pose no threat to anyone.”²

- a. What’s the difference between a “migrant child facility” and a “cage”?
- b. According to an updated *Washington Post* article, as of March 10, under the Biden administration “[m]ore than 8,500 migrant teens and children who crossed the border without their parents are being housed in Department of Health and Human Services shelters.” How do you plan on dealing with the rise in unaccompanied minors arriving at the Southern Border?³
- c. On October 22, 2020, you tweeted: “It is criminal. The Trump administration cannot reunite these kids with their parents. I am so angry right now. I have nothing more about this. #FamiliesBelongTogether.”⁴ Do you remain “so angry” about the more than 8,500 children currently being held in the custody of HHS without their parents?

RESPONSE: If I am confirmed, I will contribute to the whole-of-government effort to reform our immigration system in a way that’s consistent with our values, secures our borders, and protects our national interests.

7. Do you agree that DOJ litigation positions, such as the failure to defend in court agency actions like the “Remain in Mexico” policy, have contributed to the perceived incentives that underlie this border crisis? If not, why not?

RESPONSE: Because I am not in the Department, I cannot comment on the Department’s litigation positions unless and until I am confirmed by the Senate and can be fully briefed on the relevant facts and laws.

8. You tweeted on August 21, 2019 that you litigated the “horrible conditions inside a TX detention center, where children were held with their parents awaiting decisions on asylum claims. The conditions were nothing short of inhumane: children were scared, depressed, even suicidal.”⁵
 - a. Given that you sued the Bush administration for their migrant-child detention policy, if confirmed, what specific steps do you intend to take to solve the current migrant-child crisis?
 - b. Should the Biden administration be held to the same standard as the Bush administration?

RESPONSE: It is my understanding that the Administration is undertaking a comprehensive review of our nation’s immigration policies to ensure they protect communities, secure our borders, and protect our national interests. With respect to

² ACLU, Press Release, *ACLU Challenges Illegal Detention of Immigrant Children Held in Prison-Like Conditions*, March 6, 2007, available at: <https://www.aclu.org/press-releases/aclu-challenges-illegal-detention-immigrant-children-held-prison-conditions>

³ Nick Miroff, *At border, record number of migrant youths wait in adult detention cells for longer than legally allowed*, *Washington Post* (March 10, 2021), https://www.washingtonpost.com/national/unaccompanied-minors-detention-cells/2021/03/10/a0d39390-81c6-11eb-bb5a-ad9a91faa4ef_story.html.

⁴ Tweet on October 22, 2020, available at: <https://twitter.com/vanitaguptaCR/status/1319460342519500801>.

⁵ Tweet on Aug. 21, 2019, available at: <https://twitter.com/vanitaguptaCR/status/1164234561380683776>.

matters of policy, the Department advances the policies of the President as long as they are consistent with the law.

9. What factors should the Justice Department consider in deciding whether or not to continue to defend the death sentences of Dzhokhar Tsarnaev and Dylann Roof on direct appeal?

RESPONSE: If I am confirmed as Associate Attorney General, I will enforce the law. The decision to pursue the death penalty requires the certification of the Attorney General and there's an extensive process at the Justice Department—one that I'm familiar with given my prior service at the Civil Rights Division. If confirmed, as I did before, I will look at every case individually on the facts and the law.

10. In your view, is a personal philosophical or religious objection to the death penalty on the part of President Biden a valid justification to abandon the defense of Dylann Roof's death sentence on direct appeal?

RESPONSE: As Attorney General Garland has explained, decisions concerning the Department of Justice's investigations and prosecutions must be based on the facts and the law. The Department has developed norms, policies, and traditions to protect the independence of those decisions, and President Biden has committed that he will not interfere with them. With respect to matters of policy, because the Department is part of the Executive Branch, the Department advances the policies of the President as long as they are consistent with the law.

11. In December 2020, the Justice Department finalized a rule prohibiting the inclusion of provisions in settlement agreements directing or providing for a payment or loan to a non-governmental person or entity that is not a party to the dispute, except in certain defined circumstances. The rule follows a 2017 memo from then-Attorney General Jeff Sessions, which was codified in the Department's "Justice Manual." As Attorney General Sessions stated, "[w]hen the federal government settles a case against a corporate wrongdoer, any settlement funds should go first to the victim and then to the American people—not to bankroll third-party special interest groups or the political friends of whoever is in power." In our phone conversation, we discussed the matter of slush funds. You assured me that the government isn't here to help special interest groups. At your hearing you went on to say that as Associate Attorney General you would follow that regulation. I thank you for that. However, the answer presupposes the continued existence of that regulation. Should you be confirmed, then, will you oppose the repeal of that regulation?

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. I do not know the status of any review of these regulations. If confirmed, I would want to

understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides.

12. The Biden administration has signaled that it intends to revisit the final rule prohibiting slush funds. As Associate Attorney General, however, you will need to approve all settlement agreements. Even if the rule is rescinded or otherwise watered down, will you agree not to approve any settlements that send money to non-affected third parties?

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 when settlements come to me for approval. I do not know the status of any review of these regulations. If confirmed, I would want to understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides.

13. 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. I do not know the status of any review of these regulations. If confirmed, I would want to understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides.

14. During her nomination hearing Judge Ada Brown, a Black woman from Texas, said, “*Brown* is a landmark case. Because of *Brown v. Board of Education* I went to an excellent integrated school where my father went to a very poor segregated school. That being said, I think it would be violative of Canon 3(a)(6) for me to give a thumbs up or a thumbs down as to whether or not the Supreme Court correctly decided the case.” In other words, a Black woman came before the Judiciary Committee and testified as to the personal impact *Brown* had on herself and her family while still adhering to *what she viewed* as the ethical obligations that bound her.

You said of this answer in a letter that it was below the “moral floor” for a federal judicial appointment.

- a. Do you regret telling the Senate that a Black woman’s testimony about the personal importance of *Brown* to her and her family didn’t meet the “moral floor” for confirmation?
- b. Assuming Judge Brown was sincere in her beliefs about her ethical restrictions, was it fair to insist that she subjectively violate the Code of Conduct in order to give an answer that you would find satisfying about a case—that she testified—had a profound impact on her life as a Black woman in the South?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my

tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration's judicial nominees. As the head of the Leadership Conference, I often communicated the organization's position on judicial nominees.

15. 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 rules and guidance on how to comply with the law?

RESPONSE: As a general matter, 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, to consider whether any rulemaking or guidance is necessary in this area, and if so, to develop an appropriate response.

16. 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.

17. Will you commit, if confirmed, to both seek and follow the advice of the Department's career ethics officials on recusal decisions?

RESPONSE: Adherence to government ethics rules is vitally important, including for maintaining public faith in the impartial administration of justice. If confirmed, I will continue to consult the Department of Justice's career ethics officials about recusal issues and make decisions based on the facts, the law, and the applicable rules, policies, and practices.

18. Will you recuse from all cases in which the Leadership Conference or its affiliates have taken litigation positions?

RESPONSE: Adherence to government ethics rules is vitally important, including for maintaining public faith in the impartial administration of justice. If confirmed, I will

continue to consult the Department of Justice’s career ethics officials about recusal issues and make decisions based on the facts, the law, and the applicable rules, policies, and practices.

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

RESPONSE: In general, 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).

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

RESPONSE: In *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.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 877 (1992).

21. 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 Religious Freedom Restoration Act provides that 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, a reviewing court is ultimately responsible for determining whether a law substantially burdens a person’s exercise of religion. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719-26 (2014). But the Court has emphasized that a court making that determination must not 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. Moreover, in *Hobby Lobby*, for example, the Court held that the contraceptive-coverage requirement promulgated under the Affordable Care Act imposed a substantial burden on the plaintiffs’ exercise of religion. By requiring the plaintiffs to arrange for such coverage, the Court reasoned, the requirement demanded “that they 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, free from any improper motivation.

22. As you know, enforcement of the antitrust laws is extremely important to ensure that markets are fair and participants don’t engage in abusive activity that harms consumers. I’ve been particularly active in making sure that the Justice Department and Federal Trade Commission carefully scrutinize mergers and acquisitions, as well as look out for anti-competitive behavior and predatory practices. Over the years, I’ve focused on competition issues in a couple sectors of our economy – the agriculture industry which is important to my state of Iowa, and the health care industry.
- a. Do you agree that the Justice Department has a critical role to play in these areas?
 - b. Will you commit to making antitrust enforcement a top priority for the Department under your leadership? Especially in the drug, health care and agriculture sectors?

RESPONSE: The full and fair enforcement of our antitrust laws is critical to protecting and promoting market competition. I agree that the Justice Department has a critical role to play in the enforcement of the antitrust laws in the important agriculture and health care markets. If confirmed, I will support vigorous enforcement across all sectors of our economy and I will oversee the Antitrust Division free from any improper influence—partisan, corporate, or otherwise.

23. How will your Justice Department work with our allies and trading partners on issues of international antitrust?

RESPONSE: I believe that effective enforcement of the U.S. antitrust laws in a global economy requires cooperation with our allies and trading partners. The Department of Justice’s Antitrust Division works closely with its counterparts around the world through both bilateral relationships and participation in international organizations. If I am confirmed, I look forward to learning more about the current status of these important efforts and working with the Antitrust Division to reinforce and strengthen them.

24. Millions of Americans across the United States rely on social media platforms to run small businesses, advocate on political issues, and advertise to customers. Just as these big tech companies have increasingly begun to censor views that they don’t agree with, they have also increasingly removed pages and advertisements from their platforms. Some of these decisions are being made through automated computer detection sometimes without a human being even evaluating the content before it is removed, and once a page or material has been deemed to be against the platform’s policies the small business or user can be permanently banned and removed without any meaningful redress. There is usually no due process and many times very little explanation for what the violation was other than a statement that there was a violation of the terms of service.

With the large market dominance of these platforms and the importance of having a presence on social media, along with the lack of due process that is afforded in the removal process, is there a role that the Justice Department can play in ensuring fair and even treatment of users on social media platforms?

RESPONSE: Freedom of speech is enshrined in the Constitution's First Amendment and protecting it by maintaining a strong marketplace of ideas is critical for preserving our democracy. I have not studied the extent to which current law would allow the Justice Department to be involved in ensuring fair and equal treatment of users on social media. If confirmed, I would welcome the opportunity to learn more about this issue.

25. According to reporting from *Bloomberg* the company Avantor, where your father is Chairman, was producing and selling chemical precursors used in the illegal heroin trade in Mexico.⁶ The situation is currently under investigation by Mexican authorities.⁷ Further reporting has shown that both the particular precursor Avantor was selling and the form in which it was being sold was unlikely to have had legitimate use.⁸ Are you aware of this?

RESPONSE: I am aware of the allegations.

26. According to your public financial disclosure you hold up to \$55 million dollars in Avantor stock. Have you profited financially from Avantor's chemical trade in Mexico?

RESPONSE: As a shareholder with no role in Avantor, I am not able to say whether and how much I have profited from the various parts of Avantor's business. Per Bloomberg reporting, "total sales [of acetic anhydride by Avantor's Mexican subsidiary in 2019] were approximately \$300,000."

27. The decriminalization of heroin and methamphetamine possession would increase demand for those drugs and therefore increase demand for their chemical precursors. Do you agree, then, that there is a potential undisclosed conflict of interest in your prior public advocacy for the decriminalization of heroin and methamphetamine possession because of the likely profit such a policy would allow a precursor-manufacturer like Avantor—whose stock you hold—to capture?

RESPONSE: I do not see a conflict of interest. I have never advocated for the decriminalization of all drugs, and I do not support the decriminalization of all drugs. In 2012, I coauthored an article that advocated for states to decriminalize and defelonize

⁶ Cam Simpson, Michael Smith, and Nacha Cattan, *Heroin's Hidden Ingredient Is a Chemical Made by U.S. Companies*, *Bloomberg Businessweek* (Aug. 26, 2020), <https://www.bloomberg.com/news/features/2020-08-26/u-s-drug-crisis-is-made-in-mexico-with-american-raw-materials>.

⁷ Cam Simpson, Michael Smith, and Nacha Cattan, *Avantor Stops Sale of Chemical in Mexico Used to Make Heroin*, *Bloomberg* (Sept. 15, 2020), <https://www.bloomberg.com/news/articles/2020-09-15/avantor-stops-sales-of-chemical-in-mexico-used-to-make-heroin>.

⁸ Cam Simpson, Nacha Cattan, and Akshat Rathi, *Politics Could Imperil Probe of Narco Access to U.S. Chemicals*, *Bloomberg* (Jan. 27, 2021), <https://www.bloombergquint.com/business/politics-could-imperil-probe-of-narco-access-to-u-s-chemicals>.

simple possession “of all drugs, particularly marijuana, and for small amounts of other drugs.” While my position on these issues has evolved, because of my experience working at the Department of Justice and an experience with addiction in my own family, I have never communicated or believed that all drugs should be legal. Per my ethics agreement, signed March 2, 2021, I have committed to recusing myself from any matters relating to Avantor. As I stated at my confirmation hearing, I will, if confirmed, divest from all individual stocks I control, including Avantor. The Trustee of the 2008 and 2014 Trusts intends to divest both Trusts of any Avantor stock as soon as possible, which will occur during the next “open window” period, which is expected to begin on April 30, 2021.

28. If you are confirmed, will you agree to fully divest yourself of Avantor stock?

RESPONSE: Yes.

29. Will you agree not to take any role in the enforcement of federal criminal drug laws as doing so may implicate or give the appearance of implicating a financial conflict of interest? Note that as Associate Attorney General, neither DEA nor the Narcotic and Dangerous Drug Section of the Criminal Division would fall under your supervision; therefore there is no reason for you to refuse to do so.

RESPONSE: Were a matter to arise that presented a question of a potential conflict, I would seek the advice of the career ethics attorneys.

30. Will you agree to make no further advocacy statements regarding illegal drugs during your appointment, as doing so may implicate or give the appearance of implicating a financial conflict of interest?

RESPONSE: The Department has standards of conduct for online communications, media contacts, and information sharing with the public. I will follow Department and government-wide standards of conduct.

31. President Biden issued a document in his first week in office announcing “agency actions that heads of the relevant agencies will review in accordance with the Executive Order: ‘Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.’” This list included the “Notice of Availability of the Record of Decision for the Proposed Willow Master Development Plan Project, Alaska,” 85 Fed. Reg. 69351 (November 2, 2020).

The Willow project was leased by the Clinton administration and the project was pursued under the Obama administration’s management plan. Thus, the Willow project is not a new plan or commitment of infrastructure. The Department of the Interior followed all laws and created a robust and scientifically rigorous environmental impact statement, satisfactorily meeting the requirements of NEPA for the Willow Project.

This project is incredibly important for the State of the Alaska and the Alaska Native people that will benefit from infrastructure development and revenues from this project.

The project is estimated to contain 450 to 800 million barrels of recoverable oil. It will provide over 2,000 construction jobs and hundreds of long-term jobs. Revenues to the State of Alaska from the project will raise about \$2.3 billion and there will be an additional \$7.6 billion in federal revenues. The project is currently in litigation, impeding this season's construction and the long term permitting and development of the project in the future.

- a. Will you commit to defending the robust environmental impact statement and record of decision for the Willow project during the existing litigation and future litigation?
- b. Will you commit to defend previous environmental rulemakings and records of decision that have already been developed by non-political career civil servants and have completed the entire permitting process?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning the Willow project, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

32. Do you agree with the following statement: "One would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits."

RESPONSE: This appears to be a quote from the majority Supreme Court opinion in *Michigan v. EPA*. If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws consistent with Supreme Court precedent.

33. On October 5, 2017, you tweeted: "Yes, freedom of religion is a fundamental right, but it is not an absolute right. It cannot be used as shield to permit discrimination."⁹
- a. Do you stand by this statement?
 - b. Is this a correct understanding of the First Amendment and the Religious Freedom Restoration Act?
 - c. Will this be the understanding of the Justice Department, should you be confirmed?

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution's First Amendment and in other federal laws, including the Religious Freedom Restoration Act. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department's Civil Rights Division. In addition to overseeing the Division's enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed. If confirmed, I will uphold all rights

⁹ Tweet on October 5, 2017, available at: <https://twitter.com/vanitaguptaCR/status/916346019004198912>.

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

34. 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 personally important to me, and it is a principle that is enshrined in the Constitution’s First Amendment and in other federal laws. It is also vital to a pluralistic society, and the legal rights associated with it must be respected. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department’s Civil Rights Division. In addition to overseeing the Division’s enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed. 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.

35. 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: In our *Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court 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.” *Id.* at 2055 (citation omitted). There, 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. In finding the facts sufficient to decide the case before it, the Court declined to adopt a “rigid formula” for determining whether an employee falls within the exception. *Id.* at 2069 (citation omitted).

36. 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?

- c. How would you implement this principle in Justice Department guidance?

RESPONSE: The Supreme Court has held that 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). The Court has thus “looked beyond broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants.” *Id.* at 431. If confirmed, I will seek to ensure that all Department of Justice guidance, including any guidance on this subject, is consistent with any relevant constitutional or statutory provisions and with applicable precedent.

37. Do you agree with the following statements?

- a. 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 personally important to me, and it is a principle that is enshrined in the Constitution’s First Amendment and in other federal laws. It is also vital to a pluralistic society, and the legal rights associated with it must be respected. 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 obligations, and, as a law enforcement agency, the Justice Department should vigorously prevent and seek remedies for unlawful employment discrimination on the basis of religion. If confirmed, I would work to ensure that the Justice Department lives up to those ideals.

38. 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: Because I am not presently at the Justice Department, I am not aware of all of the details surrounding the referenced guidance, and I have not had occasion to study the issue in great detail. However, if confirmed, I would welcome the opportunity to do so, and would work to ensure that all Department actions, including funding decisions, comply with applicable Supreme Court precedent.

39. 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.

40. 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 look into the issue, in consultation with career attorneys and Department leadership, and determine effective way to enforce religious liberty protections.

41. In August of last year, Sen. Wyden and I released a report on syndicated conservation-easement transactions. That report concluded that those transaction are abusive tax shelters and that the government should do more to stop them. The Department of Justice's Tax Division is already litigating one case against a company called EcoVest, which was featured prominently in our report. I believe it is imperative that Americans believe the nation's tax laws are enforced fairly. If you are confirmed, can you commit that the Tax Division will do everything it can to help stop these abusive tax shelters, including seeking criminal charges where appropriate?

RESPONSE: If I am confirmed as Associate Attorney General, I would be committed to ensuring that Tax Division's enforcement of our tax laws is undertaken in a fair and even-handed manner. Because I am not presently at the Department, I am not aware of all the relevant facts concerning the EcoVest case and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

42. 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: Yes. During my tenure leading the Department's Civil Rights Division, I worked closely with Department leaders and career lawyers to combat the scourge of human trafficking. If I am confirmed, I will continue this important work.

43. Do you intend to advocate for the continuation of Operation Lady Justice?

RESPONSE: Because I am not currently at the Department, I am not familiar with this program. If confirmed, I look forward to reviewing this and any related efforts.

44. Does illegal immigration impose costs on border communities?

RESPONSE: If I am confirmed as Associate Attorney General, I will contribute to the whole-of-government effort to reform our immigration system in a way that is consistent with our values, secures our borders, and protects our national interests.

45. When was the last time you visited the U.S.-Mexico border?

RESPONSE: In 2009, I visited the Rio Grande Valley in connection with my representation of the plaintiffs in *Castelano v. Clinton*, No. 7:08-cv-857 (S.D. Tex. Aug. 14, 2009).

46. When was the last time you visited the U.S.-Mexico border outside of a port of entry?

RESPONSE: Please see my response to Question 45.

47. 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: 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. Religious liberty is personally important to me, and the freedoms associated with it should be protected.

48. 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 who sit on them. I am likewise aware that the Department of Justice and its client agencies may sometimes disagree with decisions issued by the Supreme Court or other courts, and may express that disagreement in legal briefs or public statements. I share his commitment, if confirmed, in seeking to ensure that all such statements made by divisions within my purview are appropriately respectful of the courts and their role in our constitutional system.

49. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. You have been very critical of it in the past.
- a. Would you allow a member of the Federalist Society to serve on your staff as Associate Attorney General?

RESPONSE: Yes.

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

RESPONSE: Yes.

- c. Do you agree with Attorney General Garland 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.

50. In letters to the Senate you have referred to “the ultraconservative Federalist Society.” What makes an organization “ultraconservative” rather than simply “conservative”?

RESPONSE: Throughout my career, I have had the opportunity to work with members of the Federalist Society on the First Step Act and other bipartisan criminal justice reforms. If I am confirmed as Associate Attorney General, I would welcome the opportunity to continue working with individuals across the political and ideological spectrum on behalf of the people of the United States.

51. 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. *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246, 2259 (2020). In *Espinoza*, 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.

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

RESPONSE: Voter fraud is a crime. If I am confirmed as Associate Attorney General, my mandate will be to enforce the laws and Constitution of the United States.

53. When we spoke on the phone we discussed the tension between claims of widespread voter suppression and the record voter turnout in the 2020 election. As I recall, you credited the latter to widespread litigation and legislation particularly in the wake of the COVID-19 pandemic. As the pandemic subsides, is it necessarily voter suppression for a State to enact legislation to return the mechanics of voting to what they were prior to the pandemic?

RESPONSE: I was grateful for your willingness to meet with me and discuss these issues. Throughout my career as a lifelong civil rights lawyer, I have advocated for every American’s right to vote. These issues must be considered on a case-by-case basis, following relevant federal law, with analysis of any specific legislation.

54. The Civil Division continues aggressively to move to dismiss potentially meritorious qui tam actions around the country. Its policy, as set forth in the controversial Granston Memo, raises serious policy questions, as the Division’s kill-the-case practice has seriously eroded public confidence in the integrity of government-supported programs. There need to be significant internal checks and balances put in place, especially since career DOJ lawyers are aggressively administering the vague provisions of the Granston Memo.

- a. Will you commit to halting all qui tam dismissals until you have undertaken and completed an in-depth review of the Division’s qui tam enforcement policy and practice?

- b. Will you also commit to specifically requiring from the career staff a reasoned and persuasive explanation set forth in writing — for your personal approval — before DOJ lawyers take the serious step of moving to dismiss any duly filed qui tam action?

RESPONSE: The False Claims Act, and its *qui tam* provisions, play a critical role in the federal government’s effort to ensure that those who do business with the government do so honestly. The False Claims Act is a vital tool for fighting fraud and abuse involving federal funds. The Department publicly reported that in fiscal year 2020 it recovered over \$2.2 billion under the Act, and that a significant portion of these recoveries were attributable to cases filed under the Act’s *qui tam* provision. I am not at the Department, and I am not familiar with recent deliberations regarding when and how the Department seeks to dismiss *qui tam* matters. If I am confirmed as Associate Attorney General, I will work to ensure that the Department supports the pursuit of meritorious whistleblower claims on behalf of the United States.

55. Another Justice Department nominee has said, “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.” For the questions below, please also explain why you agree or disagree with the statement:
 - a. Do you agree 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?

RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body and I have full respect for his place on the Court.

56. Attorney General Merrick Garland was “not familiar with the statement quoted [in Question 55]” but “[b]ased on my experience serving with Justice Kavanaugh on the D.C. Circuit for many years, I would not describe him that way.” Do you agree with Attorney General Garland?

RESPONSE: I have no reason to dispute Attorney General Garland’s perspective. I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body and I have full respect for his place on the Court.

57. Attorney General Garland also expressed his confidence in Justice Kavanaugh’s ability to “be fair in hearing cases”? Do you agree with Attorney General Garland?

RESPONSE: Yes.

58. Please describe the selection process that led to your nomination to be Associate Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

RESPONSE: In early December 2020, I was called asking if I would agree to be vetted for a position at Department of Justice. I learned of the exact position I was being vetted for a couple of weeks later. President-elect Biden officially presented the offer to me in early 2021. The President-elect publicly announced his intent to nominate me on January 7, 2021, and formally sent that nomination to Congress on January 20, 2021.

59. 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.

60. 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.

61. 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.

62. 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: I was in contact with the Open Society Foundation in early December 2020, regarding Leadership Conference grants. These contacts did not relate to my selection process.

63. As I noted at your hearing, the role of Associate Attorney General can be broadly described as having authority over the "civil" side of the Justice Department. As I also noted, you have received widespread support from criminal-justice reformers as well as some support from law enforcement organizations. I have told you I appreciate your work on criminal-justice reform but I still find this apparent mismatch somewhat odd.

- a. As Associate Attorney General what do you expect your direct authority to be in the Justice Department?

RESPONSE: The Office of the Associate Attorney General advises and assists the Attorney General and the Deputy Attorney General in formulating and implementing Departmental policies and programs pertaining to a broad range of civil justice, federal and local law enforcement, and public safety matters. Among other initiatives, the Office oversees the Antitrust Division, the Civil Division, the Civil Rights Division, the Environment and Natural Resources Division, the Tax Division, the Office of Justice Programs, Community Oriented Policing Services (COPS), the Community Relations Service, the Office on Violence Against Women, the Office of Information Policy, the Executive Office for U.S. Trustees, and the Foreign Claims Settlement Commission.

- b. Has Attorney General Garland, President Biden, Ron Klain, or any other official in the current administration assured you a role in the law enforcement or criminal justice components of the Justice Department that typically report to the DAG? If so, who made such assurances and what do you understand that role to be?

RESPONSE: No.

- 64. 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. During our phone conversation, you mentioned that you would like to be a partner with me, as you similarly place a high regard on government transparency. Given the value you place on government transparency:
 - a. Will you commit to allowing Special Counsel Durham to continue his investigation, unimpeded should the authority to do so fall to you?
 - b. Will you commit to publicly releasing the unredacted version of his report should the authority to do so fall to you?

RESPONSE: I am not aware of the current status of Mr. Durham’s investigation beyond what the media has reported. Decisions about the investigation ultimately fall to Attorney General Garland, and I would follow his lead on this matter.

- 65. Do you agree with the following statement: “Respect for human life finds an ultimate expression in the bond of love the mother has for her child. ... Whether to have an abortion requires a difficult and painful moral decision. While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained.”

RESPONSE: I am not familiar with the statement quoted. If I am confirmed as Associate Attorney General, my mandate will be to enforce the law and Constitution.

- 66. Did you support the appointment of Judge Richard Myers II to the United States District Court for the Eastern District of North Carolina?
 - a. Do you agree that Myers, a Jamaican immigrant and widely respected law professor, was a strong candidate to fill this fourteen-year vacancy on the EDNC?

- b. You have noted in the past that 30% of the district that the EDNC is African American. Do you think that Judge Myers represents that population?

RESPONSE: The Leadership Conference on Civil and Human Rights did not oppose the appointment of Judge Richard Myers II to the United States District Court for the Eastern District of North Carolina.

67. You previously tweeted: “Whether in 1984 or 2019, there is nothing funny or acceptable about the KKK or blackface. Ralph Northam must resign.”¹⁰
- a. Do you still stand by this sentiment?
 - b. Should Governor Northam have resigned?

RESPONSE: I stand by the sentiment that there is nothing funny or acceptable about the KKK or blackface.

68. In our phone call, you mentioned that consent decrees are “one tool of many” to change the behavior of state and local law enforcement. You noted that grant programs are frequently the preferred way to do so, preferring “carrots” to “sticks.” Do you agree that, in our federal system, the general presumption should be against the federal government changing the behavior of state and local law enforcement, whether by carrot or by stick?

RESPONSE: I agree that any federal interventions or incentives with respect to state and local law enforcement should be cautiously tailored to the particular problems or goals identified. In 1994, Congress gave the Department the authority to investigate police departments where there may be a pattern or practice of unconstitutional policing, and the Department often opened these investigations at the request of local officials including police chiefs and mayors. Consent decree authority is and should be judiciously used. At the end of my tenure at Civil Rights Division, there were 14 police department consent decrees in a nation of over 17,000 police departments.

69. In your SJQ, you explained that in your prior role at the DOJ, you “regularly engaged with a broad range of stakeholders in the course of this work.”
- a. If confirmed, do you plan to continue the practice of consulting with a broad range of stakeholders?
 - b. How will you decide which stakeholders will receive consultation?

RESPONSE: Yes. For example, consultation with police officers, local elected leaders and police chiefs, mental health and drug treatment experts, community residents, members of the respective Congressional delegation, and local civil rights leaders is crucial to any police department investigation and the success of any consent decree, should one be sought. The Justice Department should be open to hearing from those who have a stake in their police department and police-community trust and wish to have their views considered.

70. My Republican colleagues and I frequently hear from a variety of stakeholders that are probably different from the ones you’re used to dealing with. Do you commit to

¹⁰ Tweet on Feb. 1, 2019, available at: <https://twitter.com/vanitaguptaCR/status/1091534128577695751>.

establishing a mechanism whereby these stakeholders can get access to senior Justice Department leadership?

RESPONSE: If I am confirmed as Associate Attorney General, I would welcome the opportunity to work with a diverse range of stakeholders across the ideological spectrum, including stakeholders that I may not have met with in the past. I have a long and demonstrated record of bipartisanship and a history of building coalitions and bringing conservative and liberal voices to the table.

71. There has been a marked and deplorable increase in violent crimes committed against Asian-Americans in California and Jewish Americans in New York. Given the reporting on many of these crimes it is unfortunately the case that many of them may count as hate crimes.
- a. Should the Justice Department take the race of the perpetrator into account in determining whether to bring federal hate-crime charges in these cases?
 - b. In determining whether to bring federal hate-crime charges in these cases should the Justice Department worry about any disparate impacts such charges might have on other minority communities?

RESPONSE: I am aware of and saddened by the regrettable rise in hate incidents and hate crimes across America, including hate crimes directed at Asian Americans and Jewish Americans. No one should feel unsafe or be victimized because of their race or religion, regardless of the race of the perpetrator. If confirmed, I will work to ensure that the Department zealously enforces the hate crimes legislation that Congress has passed to protect all Americans from such crimes.

72. The dark money advocacy group Demand Justice has launched an advertising campaign comparing a number of the current Supreme Court justices to Jim Crow-era segregationists. Brian Fallon, the executive director for Demand Justice, states the group aired the ad to “bring attention to this case and maybe shame Roberts and at least one other conservative out of gutting what remains of the Voting Rights Act” and to “pressure Congress to pass the John Lewis Voting Rights Advancement Act.”¹¹ You have previously expressed your support for Demand Justice.¹²
- a. Is it appropriate to compare current justices on the Supreme Court to segregationists of the Jim Crow era?
 - b. Is it appropriate to compare current justices on the Supreme Court to segregationists of the Jim Crow era in order to “shame” them as they deliberate over pending litigation?

¹¹ Theodor Meyer, *Progressive group launches ad comparing Supreme Court justices to segregationists*, Politico (March 1, 2021), <https://www.politico.com/news/2021/03/01/progressives-voting-rights-bill-471946>.

¹² Tweet on May 3, 2018, available at: <https://twitter.com/vanitaguptaCR/status/992133229565173767> (“Welcome to the fight, @WeDemandJustice. Looking forward to working with you to #ProtectOurCourts and resist Trump’s assault on our civil rights.”).

RESPONSE: I am not familiar with the advertisement referenced. I have tremendous respect for the Supreme Court and I take very seriously the independence and integrity of the federal judiciary.

73. You expressed concern in your hearing that your social media activity contributed to the toxic environment of Twitter.
- a. Do you believe that the campaigning on both sides of nomination fights has also become toxic?
 - b. Do you believe comparing Supreme Court Justices to segregationists contributes to a toxic environment surrounding nominations?

RESPONSE: The rhetoric on social media has become harsh over the last several years, and nominations have not been immune. President Biden has stated it is time to lower the temperature, and I agree, and pledge to do so.

74. In a webinar hosted by Arabella Advisors on June 18, 2020, you commented that you support diverting federal funds to “community-based support systems.” Which federal funds did you mean?

RESPONSE: I do not recall the particular context of that comment, but the federal government often provides funds to community-based support systems through Congressionally created grants.

75. In answering questions at your hearing, you attempted to distinguish your advocacy on behalf of your organization from your personal views. Yet in a letter to the Senate you said of now-Judge Stuart Kyle Duncan, a former public-interest impact litigator himself, “He has aggressively advanced a radical **personal agenda** to set back LGBT rights, voting rights, immigrant rights, women’s reproductive freedom, and criminal justice progress.”¹³ Can you provide an account for how Kyle Duncan’s advocacy views ought to be imputed to him personally that does not also impute your advocacy views to you personally?

RESPONSE: I am proud of my career as a civil rights advocate. I have described the difference between my role of the President and CEO of a coalition of over 200 civil rights organizations and my mandate if confirmed as Associate Attorney General. I have immense respect for the distinction between these roles.

76. What is “superprecedent”? Which, if any, cases count as “superprecedent”?

RESPONSE: My understanding is that “superprecedent” is a term that has been used by some members of the Committee to refer to particular cases of the Supreme Court that they believe deserve particular reverence under the doctrine of stare decisis. If confirmed as a Department of Justice official, my mandate will be to ensure that the Department of

¹³ Available at <https://civilrights.org/resource/oppose-confirmation-stuart-kyle-duncan-u-s-court-appeals-fifth-circuit/>. (emphasis added)

Justice follows all Supreme Court precedent, regardless of whether it should be characterized as “superprecedent” or not.

77. In 2017, you received money from the Open Society Foundations’ New Executives Fund. The money “provides key support to new nonprofit heads to help organizations navigate leadership transitions.”¹⁴
- a. How much money did you receive from the Open Society Foundation?
 - b. What specific support did it provide?
 - c. How was the money or support specifically used?

RESPONSE: The New Executives Fund (NEF) is an initiative of the Open Society Fellowship that aims to support newly appointed executive directors and chief executive officers. The Leadership Conference received \$230,000, used for (1) strategic planning with the staff; (2) upgrading communications and development department systems; and (3) hiring a consultant to help strengthen board governance.

78. Racial segregation and critical theory are increasingly moving into K–12 public education. In Burbank public schools, teachers are no longer allowed to teach classic texts of racial tolerance like *To Kill a Mockingbird*.¹⁵ Sacramento City Unified School District is segregating students into racial affinity groups, saying that, “[i]n a Racial Affinity Group, we use separation to more deeply understand [our racially divided] conditioning.”¹⁶ San Diego Unified School district hired a trainer, for a teacher-training program, who believes that American public schools are culpable for the “[a]nti-Black state violence” that she describes as “spirit murdering of Black children.”¹⁷

Parents, students, and teachers across America—in both public and private schools, in both liberal and conservative households—are dismayed by the results of this type of instruction. A STEM teacher in Brooklyn said that, after a history class taught a unit on Beyoncé, students told him that they felt compelled to say that they loved Beyoncé’s music even when they personally did not.¹⁸ “I thought: they aren’t even entitled to their own musical preferences,” the teacher said. “What does it mean when you can’t even tell the truth about how music affects you?”¹⁹ In another case, a young white student came home and shared what her teachers had taught her: “All people with lighter skin don’t like people with darker skin and are mean to them.” The father was horrified and had to tell his daughter, “that’s not how we feel in this family.”²⁰

¹⁴ <https://www.opensocietyfoundations.org/grants/new-executives-fund?past=1>.

¹⁵ See Bari Weiss, *The Miseducation of America’s Elites*, City Journal (Mar. 9, 201), <https://www.city-journal.org/the-miseducation-of-americas-elites>.

¹⁶ Sac. City Unified Sch. Dist., *Anti-Racist Classroom*, <https://sites.google.com/scusd.edu/antiracistclassroom/reflect/groups?authuser=0>.

¹⁷ See Christopher F. Rufo, *Radicalism in the Classroom*, City Journal (Jan. 5, 2021), <https://www.city-journal.org/radicalism-in-san-diego-schools>; see also Bettina Love, *Anti-Black state violence, classroom edition: The spirit murdering of Black children*, J. of Curriculum & Pedagogy, 2016, at 22–25, <https://bettinalove.com/wp-content/uploads/2018/09/Anti-Black-state-violence-classroom-edition-The-spirit-murdering-of-Black-children.pdf>.

¹⁸ Weiss, *The Miseducation*.

¹⁹ *Id.*

²⁰ *Id.*

Because the Justice Department has an active role in overseeing civil rights in K–12 schools, you will have oversight over related issues if you are confirmed.

- a. Do you support racially segregating students in public schools for any reason?
- b. Do you believe that students in public schools should feel safe holding their own personal views, including views that differ from “critical race theory”?
- c. Do you believe that parents should have an effective voice in whatever ideologies public schools teach their children?
- d. Do you believe that public-school teachers who do not agree with critical theory should be protected from retaliation for their views?
- e. Do you believe it is appropriate for civil-rights training sessions, in public schools, to extend the discussion of “murder” beyond the homicide realm and into the spirit realm?

RESPONSE: I share your interest in ensuring that schools are safe, non-hostile learning environments that promote tolerance for all students. If confirmed, I look forward to working with the Civil Rights Division, other components, and other agencies to determine how they can best use their authorities to accomplish that goal.

79. When the Justice Department was being built during the Great Depression, the Treasury Section of Fine Arts commissioned artists to create 68 murals for its halls, depicting scenes, figures and subjects “cover[ing] everything from Rome and the Bible to medieval Europe to English common law and the U.S. Constitution.”²¹ In a January 5, 2009, NPR article, a Justice Department tour guide explained that “we drip symbolism in this building. This building is a sermon, a hymn to justice.”²² The article described the murals as “real art on the walls, showing America at its worst, and the redemptive power of law and justice.”²³ Do you agree that this public art is important and ought to be maintained and displayed where it is?

RESPONSE: Anyone who has had the privilege of working in the Robert F. Kennedy building cannot help but be awestruck by its remarkable architecture and artwork. If confirmed, I welcome the opportunity to appreciate these great works of public art again.

80. By tradition component heads in the Justice Department can select official portraits of former Attorneys General for their office suites. As one of the first Senate-confirmed members of Justice Department leadership and as third-ranking officer in the agency, you would have an early choice in the matter. Assuming that Attorney General Garland has already taken Ed Levi and Robert Kennedy and that Deputy Attorney General Monaco will take Janet Reno, whose Attorney General portraits do you think you will choose for the Associate’s suite?

²¹ The Living New Deal, *Kennedy Department of Justice: Robinson Murals – Washington D.C.*, <https://livingnewdeal.org/projects/department-justice-boardman-robinson-murals-washington-dc/>.

²² Ari Shapiro, *Murals Depict Power of Law and Justice*, NPR (Jan. 5, 2009), <https://www.npr.org/templates/story/story.php?storyId=98783331/>.

²³ *Id.*

RESPONSE: I have immense respect for the Department of Justice and the position of Attorney General. Only one agency in our federal government bears the name of a value—justice. The Department carries a unique charge and North Star as the sacred keeper of the promise of equal justice under the law. If confirmed, I would make such a selection thoughtfully and in honor of the Department leadership that came before me.

81. Is threatening Supreme Court Justices right or wrong?

RESPONSE: Under 18 U.S.C. § 115, it is a crime to threaten to assault, kidnap, or murder any United States judge.

82. In many western States, water conservation and, in particular, water use are important aspects of economic growth. A big part of that is the settlement of tribal claims to water rights. These settlements are preferable to litigation and can create certainty as to water supply on reservations and partnerships that allow for economic development among non-tribal water users. The Indian Resources Section of the Environment and Natural Resources Division plays a role in these settlements.

- a. As Associate Attorney General, will you allow the Indian Resources Section to continue to pursue Indian water rights settlements?
- b. As Associate Attorney General, will you approve them?

RESPONSE: If confirmed, I would approach matters involving the Environment and Natural Resources Division by working with the career lawyers in the Division to seek to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

83. Do you agree that federal environmental rules under statutes like CERCLA should minimize their preemptive effects on effective state environmental regulation regimes?

RESPONSE: If confirmed, I would approach matters involving CERCLA preemption the same as I would any matter, by working with Department leadership and career lawyers to seek to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

84. President Biden has said he wants to change the name of the Environmental and Natural Resources Division to the “Environmental Justice and Natural Resources Division.”²⁴

- a. Do you agree with this change?
- b. If so, in a future Republican administration would you agree with a future Republican Attorney General changing the name of other Justice Department components to better reflect her ideological priorities—such as the Civil and Natural Rights Division or the Tax Reform Division?

²⁴ Ellen M. Gilmer, *Biden Bolsters DOJ Focus on Environmental Justice, Climate*, Bloomberg Law (Jan. 27, 2021), <https://news.bloomberglaw.com/environment-and-energy/biden-bolsters-doj-focus-on-environmental-justice-climate>.

- c. Is changing component names to comply better with partisan ideological objectives consistent with Attorney General Garland and your professed desire to depoliticize the Department of Justice?

RESPONSE: I am aware that President Biden has issued an Executive Order directing the Justice Department to consider changing the name of the Environmental and Natural Resources Division. If confirmed, I will work Attorney General Garland, other Department leaders, and the career lawyers in the Division to carefully consider the matter and the arguments on both sides.

85. You frequently criticized President Trump for a supposed lack of diversity in his judicial nominations. Yet you also tweeted of one nominee, “Patrick Bumatay is a conservative ideologue who served as a political operative in the Trump Justice Department – carrying out some of the most extreme anti-civil rights policies of this administration. It’s no surprise Trump wants him to serve FOR LIFE on the 9th Circuit.”²⁵ Judge Bumatay is the first Filipino-American federal appellate judge and the first openly gay judge on a regional court of appeals. How do you reconcile your advocacy for a diverse bench with your opposition to Patrick Bumatay’s historic nomination?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

86. Given your opposition to Judge Bumatay, do you agree that it’s reasonable for liberals or conservatives to prioritize jurisprudence over personal characteristics in judicial selection?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

²⁵ Tweet on Dec. 8, 2019, available at: <https://twitter.com/vanitaguptaCR/status/1203844482124406784>.

87. Given your opposition to Judge Bumatay, do you agree that it's possible to oppose diverse nominees without opposing them *because of* their diverse personal characteristics?

RESPONSE: Yes. When the Leadership Conference opposed a judicial nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights.

88. When you submitted your Senate Judiciary Questionnaire, you failed to include many responsive items to Question 12. This included every article relating to your time in college. I think it's fair to say that some would describe these articles as controversial. Now, I have no doubt that this was an oversight on your part. The questionnaire asks you to bring together a lot of information quickly and the Internet in many ways only makes this harder.

Unfortunately you have not been eager to extend that kind of understanding on questionnaire omissions to others. When a judicial nominee, Ken Lee, failed to disclose only some of his college writings you wrote that he "concealed" them. You also said that his "failure to turn over controversial writings" justified Senators opposing him.²⁶

- a. Having failed to disclose *any* of your own controversial college writings, do you regret saying that Judge Lee acted in bad faith in failing to disclose some of them?
- b. Do you still think that failure to disclose such documents is grounds for opposition?

RESPONSE: In preparing my Senate Judiciary Questionnaire, I undertook extensive efforts to locate and produce all responsive materials to the Committee. Any omissions were inadvertent and were promptly corrected.

89. As I mentioned at your hearing, a group called Defending Democracy Together has taken out over a million dollars in ads supporting your confirmation. According to public reports, Defending Democracy Together—while generally a "dark money" operation—receives significant support from the founder of eBay, the Silicon Valley Community Foundation, and the tech-connected dark-money umbrella Arabella. You told me in response to my questions about this that, yes, "technology companies, executives, or foundations" were donors to the Leadership Conference and you promised to follow up with me about it.

Please provide the Committee with a list of any technology companies, executives, or affiliated foundations that have donated to the Leadership Conference along with the: (1) date(s) of the donations; (2) the amount; and (3) the stated purpose for the donation, if any.

RESPONSE: From 2017 through 2020, the Leadership Conference received donations from Google and Microsoft. Google provided \$150,000 and Microsoft provided \$750,000 to the Leadership Conference on Civil and Human Rights. Between 2017-2020, Google

²⁶ Available at <https://civilrights.org/resource/oppose-the-confirmation-of-kenneth-lee-to-the-u-s-court-of-appeals-for-the-ninth-circuit/>.

donated \$3,051,500 to the Leadership Conference Education Fund (\$3,000,000 was for the organization's police-community trust initiative), and Microsoft donated \$126,396.45 to the Leadership Conference Education Fund.

90. As part of Defending Democracy Together's million-dollar ad purchase in support of your nomination, *Politico's* Transition Playbook email on Friday, March 5, 2021, touted no fewer than three ads in support of your nomination. Given the support you have received from progressive advocacy groups, do you think it's inappropriate for you to have been opposed by conservative advocacy groups, such as the Judicial Crisis Network?

RESPONSE: Freedom of speech is enshrined in the Constitution's First Amendment. If I am confirmed as Associate Attorney General, I will be committed to upholding the First Amendment's strong protections for all Americans.

91. Committee Democrats have condemned the Judicial Crisis Network ads against you as falsely accusing you of wanting to defund the police.

- a. Who decides whether or not those ads are "false"?
- b. Do you think that tech companies should refuse to air them as misinformation?

RESPONSE: Freedom of speech is enshrined in the Constitution's First Amendment. I do not support defunding the police. I have worked collaboratively with law enforcement throughout my career, which is why my nomination is supported by so many major law enforcement organizations.

92. Do you think the number of monopolies in the American economy has increased? What companies do you believe to be monopolies?

RESPONSE: It is hard to answer that question in the abstract. Whether a company is a monopolist is a complex question requiring detailed factual and legal analysis, as is the question of whether a monopolist has violated the antitrust laws. Where concentration of market power results in abusive practices in violation of our anti-trust laws, the Justice Department should use the tools at its disposal to address these problems. If I am confirmed, I will work with the Antitrust Division to vigorously enforce the antitrust laws.

93. What principles besides economic efficiency should serve as the foundation for our nation's antitrust laws?

RESPONSE: The antitrust laws demand free, fair, and competitive markets, not just low prices. I am committed to protecting competition for all Americans and ensuring the antitrust laws work for everyone, including small businesses and workers.

94. Is it appropriate to add broader social objectives to the goals of antitrust, such as full employment or equitable distribution of wealth?

RESPONSE: Strong antitrust enforcement must be anchored by the rule of law. The antitrust laws demand free, fair and competitive markets, not just low prices. If confirmed, it will be my direction that our antitrust laws be used to effectively promote market competition. I do not have a preconceived notion of how best to achieve that goal.

95. On May 13, 2019, you penned a letter to senators urging them to oppose nominees who declined to state specifically whether *Brown v. Board of Education* was correctly decided. Your letter claimed that “the refusal by some nominees to say that the decision was correctly decided sends a dangerous signal to all Americans – especially African Americans – that *Brown* could someday be overturned and that our nation could return to the disgraceful days of racial segregation.”²⁷

Senators had been asking nominees about whether they thought *Brown* was correctly decided for over a year before your letter—typically in conjunction with whether they also thought *Roe v. Wade* was correctly decided. Starting around the time of your letter, however, the *Roe* follow-up disappeared while the focus on *Brown* intensified.

- a. Before or after you wrote that letter, did you or your staff coordinate with any Senators or Senate staff about how to approach *Brown*?
- b. Did you or your staff recommend to any Senators or Senate staff that they focus on *Brown* and ignore *Roe*?

RESPONSE: No. The Leadership Conference did not coordinate with staff about asking about this at all or how Senators should approach the question.

96. Do you think the most natural inference from a nominee refusing to answer whether **any** Supreme Court case—including *Brown*—was correctly decided is that they are sending a signal that *Brown* could be overturned? To what other cases does this principle apply?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

97. During your hearing you urged senators to look at your entire record, and not just individual statements you made. For the 27 judicial nominees you included in your May 13, 2019 letter, what information from their entire record did you use to inform your decision that they were open to overturning *Brown*?

²⁷ Available at <https://civilrights.org/resource/oppose-the-confirmation-of-judicial-nominees-who-decline-to-state-brown-v-board-of-education-decision-was-correctly-decided/>.

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration's judicial nominees. As the head of the Leadership Conference, I often communicated the organization's position on judicial nominees.

98. Two of the nominees in your May 13, 2019 letter were nominated to serve on the U.S. Court of Federal Claims. How could judges on the Court of Federal Claims credibly signal an intent to overturn *Brown* given its status as a limited-jurisdiction Article I court?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration's judicial nominees. As the head of the Leadership Conference, I often communicated the organization's position on judicial nominees.

99. 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 a Department of Justice official, I will seek to ensure that the Department follows Supreme Court precedent as the law of the land.

100. Will the litigating components under your authority defend the constitutionality of the Religious Freedom Restoration Act in court?

RESPONSE: I understand that the Department of Justice’s longstanding practice is to defend the constitutionality of laws passed by Congress so long as there is a reasonable argument to be made that the law is constitutional, and so long as the law does not violate the separation of powers by infringing on executive authority. If confirmed, I will uphold that traditional practice for all laws, including the Religious Freedom of Restoration Act.

101. The Justice Department often plays a role in judicial selection.
- a. What role do you see yourself playing in that process?
 - b. What role do you see Senate consultation playing in that process?
 - c. Will you require nominees to pass case-specific “litmus tests”?

RESPONSE: It is my understanding that the Department of Justice traditionally plays a role in advising the President on the selection of judicial nominees, including vetting of potential nominees by the Department’s Office of Legal Policy. If I am confirmed, I would follow the Attorney General’s lead with respect to my role in any judicial selections.

102. Liberal litigation groups like Democracy Forward have brought FOIA suits against the Justice Department seeking communications between Office of Legal Policy attorneys and certain judicial nominees.
- a. Did you, your staff, or anyone else associated with the Leadership Conference play any role in this or related litigation against the Justice Department seeking communications with judicial nominees?

RESPONSE: To the best of my knowledge, LCCHR was not involved in any litigation or FOIA requests on this issue.

- b. Do you agree with Democracy Forward that communications between Justice Department attorneys and judicial nominees should be disclosed under FOIA?

RESPONSE: I believe transparency and timely responses to FOIA requests are important functions for the Department of Justice, as for any other agency. If confirmed, I will work closely with the career officials in the Office of Information Policy to ensure timeliness and transparency in FOIA responses and that the Justice Department is complying with its legal obligations under FOIA.

103. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

RESPONSE: In early December 2020, I was called asking if I would agree to be vetted for a position at Department of Justice. I learned of the exact position I was being vetted for a couple of weeks later. President-elect Biden officially presented the offer to me in early 2021. The President-elect publicly announced his intent to nominate me on January 7, 2021, and formally sent that nomination to Congress on January 20, 2021.

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

RESPONSE: The Department of Justice received these questions on March 12, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on March 17, 2021.