

Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for Dean John Sauer
Nominee to be Solicitor General
February 27, 2025

1. On February 12, 2025, Acting Solicitor General Sarah Harris notified me that the Department of Justice would no longer defend the constitutionality of laws that establish for-cause removal provisions that apply to members of multi-member regulatory commissions.

- a. **If confirmed, would you decline to defend the constitutionality of for-cause removal provisions that apply to members of multi-member regulatory commissions? Why or why not?**

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation.

- b. **How many federal statutes include for-cause removal protections that apply to multi-member regulatory commissions?**

RESPONSE: I have not researched or studied this question, and I do not know the specific number.

- c. **If confirmed, would you decline to defend a constitutional challenge to a federal statute on policy grounds?**

RESPONSE: The duty of the Solicitor General is to defend the validity of Congressional enactments when there are reasonable arguments available to do so. An exception exists in certain cases where there is a conflict between a federal statute and the President's Article II authority. If confirmed, I commit to following these principles.

- d. **If confirmed, under what circumstances would you decline to defend a federal statute from a constitutional challenge?**

RESPONSE: See my response to Question 1(c), above.

2. In her February 12, 2025, letter, Acting Solicitor General Harris specifically cited the Federal Trade Commission (FTC), the National Labor Relations Board (NLRB), and the Consumer Product Safety Commission (CPSC) as agencies whose for-cause removal protections the Office of the Solicitor General would no longer defend.

- a. **Are the for-cause removal protections of the Federal Reserve Board of Governors, 12 U.S.C. 242, substantially different from those found in 15 U.S.C. 41, 29 U.S.C. 153(a), and 15 U.S.C. 2053(a)? Why or why not?**

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation. As a private attorney, I have not researched or studied this question.

- b. **In your view, does the Federal Reserve Board exercise executive, legislative, or judicial power when it sets federal interest rates?**

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation. As a private attorney, I have not researched or studied this question.

- c. **If the Federal Reserve Board exercises legislative power when setting interest rates, would that run afoul of the nondelegation doctrine?**

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation. As a private attorney, I have not researched or studied this question.

- d. **If the Federal Reserve Board exercises executive power when setting interest rates, would the President not have the unfettered ability to remove governors at will in the same way he can remove cabinet appointees?**

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation. As a private attorney, I have not researched or studied this question.

- e. **Can you think of any reasons why Congress would want to insulate the Federal Reserve Board from political vicissitudes?**

RESPONSE: I have not researched or studied this question, and I am not in a position to speculate why Congress or other actors might take any position on such issues.

3. According to your Senate Judiciary Questionnaire, you sat on the Grant Review Committee for the Alliance Defending Freedom from 2015 to 2016.

- a. **Can you specify which month in 2015 your tenure on the committee began and which month in 2016 it ended?**

RESPONSE: I do not recall the specific month in which my tenure began and ended.

- b. **How many members were on this committee with you?**

RESPONSE: I do not recall the number of members on this committee. To the best of my recollection, the phone conferences in which I participated probably involved about 4 to 6 participants.

- c. **How often would the committee meet during your time on it?**

RESPONSE: To the best of my recollection, I believe the committee met by phone conference call on a monthly or bi-monthly basis, but I am not certain of the frequency.

- d. **During your time on this committee, what metrics did you use when deciding whether to award grants to particular organizations?**

RESPONSE: I do not recall any specific metrics used to decide whether to award grants. I recall reviewing summaries of grant applications and discussing them with other members of the committee in the phone conferences.

- e. **Did you ever support awarding grants to organizations that opposed in vitro fertilization?**

RESPONSE: I do not recall any grants that related to in vitro fertilization. I do not recall which organizations received grants, and I cannot speak to their positions on this question.

- f. **Did you ever support awarding grants to organizations that opposed bans on gay conversion therapy?**

RESPONSE: I do not recall any grants that related to that issue. I do not recall which organizations received grants, and I cannot speak to their positions on this question.

4. According to your Senate Judiciary Questionnaire, you have been a member of Teneo since 2024. According to its website, Teneo seeks “to recruit, connect, and deploy talented conservatives who lead opinion and shape the industries that shape society.”

a. Who initially approached you about joining Teneo?

RESPONSE: I was approached by my cousin, Charles Capps, who is a member of Teneo.

b. What was the process for your becoming a member?

RESPONSE: I do not recall a specific process. I believe my cousin suggested the name to the organization, and they accepted me.

c. Have you signed any confidentiality agreements related to your membership in Teneo?

RESPONSE: I do not recall any such agreement.

d. Why did you agree to join?

RESPONSE: I understood that it is an organization of like-minded conservative thinkers and professionals, and my cousin encouraged me to join.

e. How many Teneo events have you attended since becoming a member in 2024?

RESPONSE: None.

f. Please describe the nature of any Teneo events you have attended.

RESPONSE: I have not attended any Teneo events.

g. How many people would you estimate attended these events?

RESPONSE: I have not attended any Teneo events.

h. Did any speakers address attendees at a Teneo event? If so, who? What did they discuss?

RESPONSE: I have not attended any Teneo events.

- i. Since President Trump announced his intent to nominate you, have you attended a Teneo event?**

RESPONSE: I have not attended any Teneo events.

- j. Are you aware of any current or former state or federal judges who are members of Teneo?**

RESPONSE: No.

- k. Are you aware of any Supreme Court justices who are members of Teneo?**

RESPONSE: No.

- l. Are you aware of any Teneo members who were convicted for their actions related to the January 6 attack on the U.S. Capitol?**

RESPONSE: No.

5. You clerked for Judge J. Michael Luttig on the United States Court of Appeals for the Fourth Circuit. In 2019, he wrote a letter to this Committee strongly endorsing William P. Barr's nomination to be attorney general.

- a. Would you describe Judge Luttig as a good judge of character?**

RESPONSE: Yes.

- b. Would you describe Judge Luttig as a first-class legal mind who is respected by scholars and judges across the ideological spectrum?**

RESPONSE: Yes.

- c. Do you disagree with Judge Luttig that the *Trump v. United States* immunity decision is "abominable"?**

RESPONSE: Yes.

- d. Do you disagree with Judge Luttig that the Supreme Court in that case "cut the heart and soul out of America's Democracy and the Rule of Law"?**

RESPONSE: Yes.

6. In December 2024, the Supreme Court heard oral arguments in *Food and Drug Administration v. Wages and White Lion Investments, LLC*. In that case, the FDA appealed a Fifth Circuit decision that the agency acted “arbitrarily and capriciously” in denying premarket tobacco product applications from two e-cigarette manufacturers. The Fifth Circuit’s decision relied upon legal theories that have been rejected by other courts of appeals that have reviewed materially similar FDA denial orders. Resolution of this circuit split is necessary to prevent forum shopping by e-cigarette manufacturers and to allow the FDA to effectively regulate under the Tobacco Control Act to prevent children from becoming addicted to unauthorized tobacco products.

Will you commit, if you are confirmed, to maintaining the FDA’s litigation position in this case?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me provide a position on behalf of the Department and the United States regarding *FDA v. Wages and White Lion Investments, LLC*. If I am confirmed, I will examine the posture of the case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any future litigation.

You currently represent President Trump as an individual, and you have also represented his family’s business entities. Just last month, you filed an amicus brief on his behalf to the U.S. Supreme Court in *TikTok v. Garland*. In the past, President Trump and his political operatives have asked both his personal attorneys and government officials to violate the law and their ethical obligations.

- a. **Why should we trust you to place the Constitution and your professional obligations ahead of your personal loyalty to President Trump?**

RESPONSE: I refer to my opening statement and my testimony in response to the Committee’s questions at my confirmation hearing.

- b. **If President Trump attempts to pressure you engage in unethical or illegal conduct, will you tell him, “No?”**

RESPONSE: I do not believe that the question poses a plausible scenario. If any supervisor instructed me to do something that I believed was illegal or unethical, I would consult the applicable legal or ethical rules, and with counsel if appropriate, and I would endeavor to follow the law and the applicable ethical rules.

7. In 2020, as Solicitor General of Missouri, you filed an amicus brief in the U.S. Supreme Court on behalf of Missouri and 16 other states, in support of plaintiff states that contested the administration of the 2020 presidential election.

Did President Trump lose the 2020 election, yes or no?

RESPONSE: I believe that the conduct of the 2020 Presidential election was deeply flawed. I acknowledge that President Biden was certified as the victor and served as the 46th President of the United States.

8. In October 2024, the Supreme Court heard argument in *Bondi v. VanDerStok*, a case concerning whether the Gun Control Act of 1968 regulates ghost guns. Specifically, in 2022, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) promulgated regulations clarifying that the Act does regulate certain products such as weapons parts kits or partially complete, disassembled, or nonfunctional frames or receivers, if these parts or devices can be readily converted into an operational firearm or functional frame or receiver. The United States Court of Appeals for the Fifth Circuit held these provisions were not consistent with the Act, and the United States appealed.

Will you commit, if you are confirmed, to maintaining the Federal Government's litigation position in this case?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me provide a position on behalf of the Department and the United States regarding *Bondi v. VanDerStock*. If I am confirmed, I will examine the posture of the case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any future litigation.

**Nomination of D. John Sauer
To be Solicitor General of the United States
Questions for the Record
Submitted February 27, 2025**

QUESTIONS FROM SENATOR WHITEHOUSE

**Please answer each question and sub-question individually and as specifically as possible.
Where indicated, please provide only yes or no answers.**

1. Your Senate Judiciary Questionnaire says that in 2024 you joined the Teneo Network.

a. In your own words, what is the Teneo Network?

RESPONSE: I understand it to be an organization of conservative professionals who meet for social and professional networking purposes.

b. How did you first hear about the Teneo Network?

RESPONSE: My cousin, Charles Capps, invited me to join. I had possibly heard of the organization before that time, but I do not recall any details.

c. Why did you choose to join the Teneo Network?

RESPONSE: My cousin, Charles Capps, invited me to join.

2. Former U.S. Solicitor General Rex Lee said, “There has been this notion that my job is to press the administration’s policies at every turn and announce true conservative principles through the pages of my briefs. It is not. I’m the solicitor general, not the pamphleteer general.”

a. Do you agree with this statement?

RESPONSE: I believe that the Solicitor General’s job is to defend and advocate for federal statutes and the policies and actions of the Executive Branch, especially before the U.S. Supreme Court, when reasonable grounds to do so are available. I agree that the position principally calls for legal advocacy rather than political or policy advocacy.

3. Do you believe the Solicitor General should be an independent voice within a presidential administration?

RESPONSE: I believe that the Solicitor General’s role is to defend and advocate for the validity of federal statutes and actions of the Executive Branch, under the leadership of the Attorney General and the President of the United States. Like any attorney, the

Solicitor General should provide his or her best legal advice when consulted on matters of law.

4. If confirmed, how will you maintain your independence from the President?

RESPONSE: If I am confirmed, I will advocate for the United States and its people under the leadership of Attorney General Bondi and President Trump, consistent with the Constitution and the rule of law.

5. If confirmed, how will you handle conflicts between the President's agenda and your duties as Solicitor General?

RESPONSE: The duties of the Solicitor General include defending actions of the Executive Branch taken to advance the President's policy agenda. Therefore, I do not anticipate conflicts between the duties of the Solicitor General and the President's policy agenda. In all matters, I will endeavor to follow the Constitution and the rule of law.

6. If you believe the Attorney General has directed you to take a position for reasons that are improper, what course of action would you take?

RESPONSE: I do not believe that the question poses a plausible scenario. If any supervisor instructed me to do something that I believed was illegal or unethical, I would consult the applicable legal or ethical rules, and with counsel if appropriate, and I would endeavor to follow the law and the applicable ethical rules.

7. Justice Kavanaugh's concurrence in *Dobbs v. Jackson Women's Health Organization* stated that "the constitutional right to interstate travel" would prohibit a state from barring "a resident of that State from traveling to another State to obtain an abortion."

- a. Do you agree with these statements from Justice Kavanaugh's concurrence?

RESPONSE: I have not studied this particular legal issue, and I have not formed an opinion about it.

- b. If confirmed, will you defend in court "the constitutional right to interstate travel" for reproductive health care, including an abortion?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation.

8. You were President Trump's lead counsel advancing his presidential immunity arguments in *Trump v. United States*.

- a. Did *Trump v. United States* hold that a President must first be impeached and convicted by Congress before being criminally prosecuted for an official act?

RESPONSE: *Trump v. United States* held that the President has absolute immunity from criminal prosecution for official acts in the exercise of his core constitutional powers, and that the President has at least presumptive immunity from criminal prosecution for acts within the outer perimeter of his official responsibility. On my reading of the opinion, this immunity applies regardless of whether the President is impeached and convicted by Congress before being criminally prosecuted.

- b. Do you believe that a President would be immune from criminal prosecution for taking a bribe in exchange for issuing a pardon?

RESPONSE: I cannot address a hypothetical scenario without studying the specific facts and circumstances of the case. The application of Presidential immunity to potential scenarios involving the Pardon Power is discussed in both Chief Justice Roberts' opinion for the Court and the concurring opinion of Justice Barrett in *Trump v. United States*.

- c. Do you believe that presidential immunity from criminal prosecution extends to any executive branch official other than the President?

RESPONSE: I have not researched or studied this question in detail, and I have not formed an opinion on the potential immunity from criminal prosecution for official acts of officers of the Executive Branch other than the President. I am aware of Supreme Court decisions discussing the immunity from civil liability for official acts of Executive Branch officials other than the President.

9. You were the counsel of record on President Trump's amicus brief in *TikTok v. Garland*, which asked the Supreme Court to "stay" the statutory deadline at issue but took "no position on the merits of the dispute."

- a. What authority does an appellate court have to enjoin a federal statute indefinitely without regard to a challenger's likelihood of success on the merits?

RESPONSE: I refer to the arguments in the amicus brief referenced in the question.

- b. Is an amicus's promise to "pursue a negotiated resolution" a legal basis for an appellate court to enjoin a federal statute?

RESPONSE: I refer to the arguments in the amicus brief referenced in the question.

10. Do you believe that judges who issue orders that are unfavorable to the Trump administration should be impeached?

RESPONSE: Impeachment is a political question that falls under the authority of Congress, not the Department of Justice. I have not formed an opinion on whether any particular judge should be impeached.

11. Do you believe a federal judge issuing a temporary restraining order against the executive branch is tantamount to a coup?

RESPONSE: I cannot address a hypothetical scenario with reference to specific facts. Regarding existing temporary restraining orders against the Executive Branch, as I have yet to be confirmed as Solicitor General, it would be inappropriate for me provide a position on behalf of the Department on matters that might involve future or ongoing litigation. In general, American citizens have a fundamental right under the First Amendment to employ powerful rhetoric and vivid images in political discourse, and I strongly support that right, subject to the established exception for true threats.

12. Do you believe it is appropriate to refer to judges who rule against President Trump as “political terrorists”?

RESPONSE: I am not familiar with the statement quoted in this question. I cannot comment on public statements made by others that I have not reviewed and for which I do not know the context. In general, American citizens have a fundamental right under the First Amendment to employ powerful rhetoric and vivid images in political discourse, and I strongly support that right, subject to the established exception for true threats.

13. Under Supreme Court case law, what kind of showing must an individual make to properly invoke the Fifth Amendment privilege against self-incrimination in response to a grand jury subpoena?

RESPONSE: I have not recently researched or studied this question, and I have no opinion to offer on it.

14. Do you agree with Justice Scalia’s statement in *Clinton v. City of New York* that *Train v. City of New York* “proved [President Nixon] wrong” about the “‘constitutional right’ to impound appropriated funds”?

RESPONSE: I have not reviewed that opinion recently, and I have not formed an opinion on that issue.

15. Did Joe Biden win the 2020 Presidential election?

RESPONSE: I believe that the conduct of the 2020 Presidential election was deeply flawed. I acknowledge that President Biden was certified as the victor and served as the 46th President of the United States.

Senate Judiciary Committee
Hearing on the Nomination of D. John Sauer
to be Solicitor General
February 26, 2025
Questions for the Record
Senator Amy Klobuchar

1. In 2022, Congress passed legislation that I led to empower Medicare to negotiate lower drug prices for seniors. As a result, Americans are expected to save \$1.5 billion in out-of-pocket costs in 2026 alone.

Pharma companies have taken to the courts to dismantle this law. But, every single judge who has heard these cases - including those appointed by Republicans - has agreed the law is constitutional.

- I was pleased to see the government file a brief in the Third Circuit last week in defense of the law. Will you commit to continuing to defend this law?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation.

2. In *New York Times v. Sullivan*, a unanimous ruling in support of First Amendment protections for the press, the Court held that when newspapers report on public officials, they are only liable for untrue statements that are published with knowledge or reckless disregard for whether the statement was false. The Court recognized that “erroneous statement is inevitable in free debate” and “must be protected if the freedoms of expression are to have the ‘breathing space’ that they ‘need ... to survive.’”

- Do you agree with the principles laid out in the Supreme Court decision in *New York Times v. Sullivan*?
- Do you agree with the Court that it is important to impose an “actual malice” test to allegations of libelous statements regarding public officials?

RESPONSE: I agree that the United States Supreme Court’s decision in *New York Times v. Sullivan* requires a public official to show that a defendant’s defamatory falsehood was made with knowledge the statement is false or reckless disregard for whether the statement was false, in order to recover damages in court from the defendant. It is important for subordinate courts to follow this precedent.

3. In a memo dated February 12, 2025, the Justice Department stated it has determined that the statutory tenure protections for members of the Federal Trade Commission, National Labor Relations Board, and Consumer Protection Safety Commission are unconstitutional and that it

will no longer defend the constitutionality of Congressional acts that require cause for the President to remove bipartisan Senate confirmed members of independent agencies.

- As you know, there has been Supreme Court precedent upholding the constitutionality of these bipartisan independent agencies for 90 years. *See Humphrey's Executor v. U.S.* (1935). Isn't it true the Court has not overturned this decision?

RESPONSE: I am not aware of a Supreme Court opinion expressly overruling *Humphrey's Executor v. United States*, 295 U.S. 602 (1935).

- In *PHH Corp. v. Consumer Fin. Prot. Bureau* (2018), Justice Kavanaugh, while serving on the D.C. Circuit, wrote that multi-member independent agencies are part of a “deeply rooted tradition” that “has been widely recognized by leading judges, congressional committees, and academics...” Do you agree?

RESPONSE: Justice Kavanaugh's opinion states, “That deeply rooted tradition — namely, that independent agencies are headed by multiple commissioners or board members — has been widely recognized by leading judges, congressional committees, and academics who have studied the issue.” *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 177 (2018) (emphasis added). I have not researched or studied this question, and I have no opinion to offer on it at this time.

4. When asked if you agreed with Mr. Reitz that there were circumstances in which it would be appropriate for a government official to defy a court order, you said “It's hard to make a very blanket, sweeping statement about something without being presented the facts and the law.” Chief Justice John Roberts said in his most recent end-of-year report that disregarding federal court rulings is “dangerous” and “must be soundly rejected.”

- How do you reconcile your views that there may be circumstances in which government officials could refuse to comply with a court order with the Chief Justice's warning?

RESPONSE: I have not reviewed Chief Justice Roberts' most recent end-of-year report on the federal judiciary. In general, for the reasons discussed above and in my responses to questions from Ranking Member Durbin and Senator Hawley at the confirmation hearing, I do not view these statements as inconsistent.

5. After the 2020 Election, you filed a brief at the Supreme Court in support of Texas's attempt to stop swing states that voted for President Joe Biden from delaying their ability to vote in the electoral college.

- Given that lawsuit, and every other lawsuit challenging the 2020 Election was dismissed, do you agree that President Biden won the 2020 election?

RESPONSE: I believe that the conduct of the 2020 Presidential election was deeply flawed. I acknowledge that President Biden was certified as the victor and served as the 46th President of the United States.

Nomination of Dean John Sauer to be the U.S. Solicitor General
Questions for the Record
Submitted February 27, 2025

QUESTIONS FROM SENATOR COONS

1. If President Trump asked you to do something you judged to be illegal or unethical, would you resign? Please answer yes or no.
 - a. If you would not resign, what would you do?

RESPONSE: As noted in my confirmation testimony, I do not believe that this question poses a plausible scenario. If any supervisor instructed me to do something that I believed was illegal or unethical, I would consult the applicable legal or ethical rules, and with counsel if appropriate, and I would endeavor to follow the law and the applicable ethical rules, which might require resignation as a last resort.

2. If the President asked you to advance a legal argument before the Supreme Court for which you could not make a good-faith argument in favor of its constitutionality, what would you do?

RESPONSE: If confirmed, I commit to working to ensure that the Department complies with its legal obligations and upholds the Constitution.

3. You have represented—and continue to represent—President Trump and some of his family members in their personal capacity. If confirmed, will you withdraw from any cases in which you represent President Trump in his personal capacity?

RESPONSE: Yes.

- a. Will you cease all representation of President Trump’s business entities if confirmed as Solicitor General?

RESPONSE: Yes.

- b. How much money have you earned—legal fees and otherwise—for your representation of President Trump, his family members, and/or business entities in which President Trump or his family members have a financial interest?

RESPONSE: The amounts paid to my firm for the legal representation of President Trump, which sometimes involved representation of his family members and business entities as well, are set forth in the public disclosures of Save America PAC.

4. In a memo to all Department of Justice employees, Attorney General Pam Bondi, stated that Department attorneys who refuse to advance arguments “deprive[] the President of the benefit of *his* lawyers.” I want you to focus on the part of this statement that references Department attorneys as President Trump’s lawyers.

- a. Do you agree with this characterization of Department attorneys by Attorney General Bondi—your future boss if you are confirmed?

RESPONSE: I have not reviewed the referenced memorandum of Attorney General Bondi. I strongly support Attorney General Bondi’s leadership of the Department. The Department’s attorneys have a duty to defend the actions of the Executive Branch, including those actions taken to implement the policy agenda of the President of the United States.

- b. If confirmed, would you consider yourself President Trump’s lawyer?

RESPONSE: If I am confirmed, I will be an attorney of the Department of Justice. The Department of Justice represents the United States of America and its people, under the leadership of the Attorney General and the President of the United States.

- c. For whom does the Department of Justice work?

RESPONSE: See above response.

5. As a Justice Department lawyer, when is it appropriate to refuse to follow a directive of the President?

RESPONSE: If confirmed, my loyalty will be to the Constitution, and I will follow the law.

6. How would you respond if your role at the Department of Justice required you to follow a policy directive that was unconstitutional?

RESPONSE: If confirmed, my loyalty will be to the Constitution, and I will follow the law.

7. When is it appropriate for the Department of Justice to decide not to defend a federal law?

RESPONSE: While I decline to opine on a hypothetical situation, it is my understanding that 28 U.S.C. § 530D applies to situations in which the Department determines not to defend unconstitutional federal laws.

8. What is the remedy if the President violates his constitutional duty to faithfully execute the laws?

RESPONSE: The Constitution gives Congress the power of impeachment and removal if the President violates his constitutional duties.

9. During oral argument before the U.S. Supreme Court in *Trump v. United States*, you suggested that the President would be eligible for immunity “depending on the circumstances” for ordering the military to assassinate a political rival. Under what circumstances is it appropriate for a sitting President of the United States to order the assassination of a political rival?

RESPONSE: I am not in a position to address hypotheticals divorced from real-world facts and circumstances. I have never contended that it would be “appropriate” for a President to order the assassination of a political rival. In *Trump v. United States*, I contended that President Obama’s ordering of the killing of U.S. citizens located abroad by drone strike, without due process of law, would be shielded from criminal prosecution by Presidential immunity unless the President was first impeached and convicted by the U.S. Senate.

10. If confirmed, what process would you put in place to review a case before the Department withdraws a claim or changes its legal position?

RESPONSE: If confirmed and required to evaluate whether to withdraw a claim or change the Department’s legal position, I would consult with relevant officials in the Department, and look to the Constitution, applicable laws and judicial opinions, and the Department’s regulations and policies, among other factors.

11. Section 702 of the Foreign Intelligence Surveillance Act (FISA) is up for reauthorization next year. Do you think the Constitution requires that law enforcement obtain a warrant before accessing Americans’ communications collected pursuant to Section 702?

RESPONSE: In my career as a prosecutor and an attorney in private practice, I have not had occasion to consider a warrant requirement for intelligence collection under Section 702, and I have no opinion to offer on that question.

Senator Richard Blumenthal
Post-Hearing Questions for the Record
Submitted to Dean Sauer

Nomination of Dean Sauer to be Solicitor General of the United States,
Thursday, February 27, 2025

1. An independent Department of Justice (DOJ) is a pillar of our nation and essential to the rule of law. You have a deep personal relationship and loyalty to the President. You argued President Trump's immunity case in front of the Supreme Court last term.

- a. If confirmed, will you commit to putting the Constitution and rule of law above the desires of President Trump?

RESPONSE: Yes.

- b. If confirmed, will you commit to recuse yourself from all matters connected to your prior representation of the President?

RESPONSE: In the event of any potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations.

2. The Emergency Medical Treatment and Labor Act (EMTALA), which has been law since 1986, requires hospitals to provide stabilizing care for anyone experiencing an emergency medical condition. This includes emergency abortion care, if an abortion would stabilize a patient experiencing an emergency medical condition. However, several states have enacted strict abortion bans without exceptions for the health of the pregnant person, directly conflicting with EMTALA. Project 2025 calls on DOJ to eliminate existing injunctions against states whose laws conflict with EMTALA and withdraw from all current lawsuits seeking to ensure access to emergency abortion care.

- a. If confirmed, will you commit to defending federal law and enforcing EMTALA's emergency abortion care requirement?

Response: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me provide a position on behalf of the Department regarding policies on enforcing EMTALA. However, if confirmed, I will carefully review and consider the applicability of any federal law, the posture of any such case, the position held by the Government, and uphold my constitutional duty in any such litigation.

3. Decades of research have shown that mifepristone is safe and effective. However, you filed an amicus brief arguing on behalf of the United States Medical Association challenging the Food and Drug Administration's (FDA) approval of mifepristone.
 - a. If confirmed, will you commit to continuing DOJ's efforts to defend against baseless lawsuit challenging the approval of and expansion of access to mifepristone?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will carefully review and consider the applicability of any federal law, examine the posture of any such case, the position held by the Government, and uphold my constitutional duty in any such litigation.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nominations Hearing | February 26, 2025

Questions for the Record for J. Dean Sauer

Did Donald Trump lose the 2020 presidential election?

RESPONSE: I believe that the conduct of the 2020 Presidential election was deeply flawed. I acknowledge that President Biden was certified as the victor and served as the 46th President of the United States.

If confirmed as Solicitor General and facing a conflict between your duties to the Constitution and a request from the President, how will you resolve that conflict?

RESPONSE: The duty of the Solicitor General is to defend the validity of Congressional enactments when there are reasonable arguments available to do so. An exception exists in certain cases where there is a conflict between a federal statute and the President's Article II authority. If confirmed, I commit to following these principles.

If President Trump ever directs, asks, or implies that you should take an action that is unconstitutional, would you do it?

RESPONSE: I do not believe that the question poses a plausible scenario. If any supervisor instructed me to do something that I believed was illegal or unethical, I would consult the applicable legal or ethical rules, and with counsel if appropriate, and I would endeavor to follow the law and the applicable ethical rules.

If the President or Attorney General ever orders you to act in way that threatens your obligation as an attorney to credibly represent your case to the court, would you resign?

RESPONSE: I do not believe that the question poses a plausible scenario. If any supervisor instructed me to do something that I believed was illegal or unethical, I would consult the applicable legal or ethical rules, and with counsel if appropriate, and I would endeavor to follow the law and the applicable ethical rules.

If a Presidential takes executive action, and a court later rules that action is unconstitutional, is it ever permissible for a President to disregard the court's order?

RESPONSE: I am not in a position to address hypotheticals or situations that might come before me in an official capacity if I am confirmed. Generally, if there is a court order that directly binds a federal or state official who is a party to the case and subject to

the court's jurisdiction, the official should follow it. However, there may be extraordinary cases—such as the historical examples of the *Dred Scott* and *Korematsu* decisions—which render it difficult to make an exceptionless, categorical statement.

Does *any* president ever have the authority to unilaterally remove any part of the Constitution?

RESPONSE: No.

Are there *any* limits to Presidential power?

RESPONSE: The President's power is set forth in Article II of the U.S. Constitution. Like the power of other government officials, that authority is also subject to constraints set forth in the Amendments to the Constitution, including the Bill of Rights and the Fourteenth Amendment.

If yes, what are the limits?

RESPONSE: Please see answer above.

Please explain the legal basis for your answer to part a of this question.

RESPONSE: Please see answer above.

In 2015, you filed an amicus brief with the Supreme Court arguing against constitutional protections for same-sex marriage. The Supreme Court disagreed with you, ruling that same-sex marriage is indeed protected by the Constitution. In 2022, Congress also passed the Respect for Marriage Act, adding statutory protection to same-sex marriage. **Mr. Sauer, if confirmed as Solicitor General, will you defend the constitutionality of same-sex marriage?**

RESPONSE: If I am confirmed, I will defend the validity of federal statutes and actions of the Executive Branch when there are reasonable grounds to do so, with the caveat that, in the event that a federal statute conflicts with the Executive Branch's authority under Article II, I will defend the Executive Branch's authority under Article II.

Is birthright citizenship guaranteed by the Constitution?

If confirmed as Solicitor General, will you defend the constitutional right to birthright citizenship?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation.

Is the right to contraception protected by the Constitution?

RESPONSE: *Griswold v. Connecticut* is binding Supreme Court precedent and entitles to respect as such.

If you are confirmed as Solicitor General, will you defend the constitutional right to contraception?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation.

Nomination of Dean John Sauer to be Solicitor General of the United States
Questions for the Record
Submitted February 27, 2025

QUESTIONS FROM SENATOR CORY A. BOOKER

1. In your opinion, is involvement in the federal criminal investigations and prosecutions of President Trump alone, without other evidence of wrongdoing, misconduct, or unsatisfactory job performance, grounds for the demotion, reassignment, or termination of Department of Justice (DOJ) personnel?
 - a. If you are confirmed as Solicitor General, will you recommend or otherwise support the demotion, reassignment, or termination of any DOJ personnel in the Office of the Solicitor General for their involvement in the federal criminal investigations and prosecutions of President Trump absent evidence of wrongdoing, misconduct, or unsatisfactory job performance?
 - b. If you are confirmed as Solicitor General, will you reverse the demotion, reassignment, or termination of any DOJ personnel in the Office of the Solicitor General for their involvement in the investigations and prosecutions of President Trump if you learn that this was the sole basis for the demotion, reassignment, or termination?

RESPONSE: Any disciplinary actions towards Department personnel should be undertaken based on the facts of each situation in a manner consistent with Department policies, applicable law, and the Constitution.

2. In your opinion, is involvement in investigations or prosecutions of individuals related to the January 6 Capitol riot alone, without other evidence of wrongdoing, misconduct, or unsatisfactory job performance, grounds for the demotion, reassignment, or termination of DOJ personnel?
 - a. If you are confirmed as Solicitor General, will you recommend or otherwise support the demotion, reassignment, or termination of any DOJ personnel in the Office of the Solicitor General for their involvement in investigations or prosecutions of individuals related to the January 6 Capitol riot absent evidence of wrongdoing, misconduct, or unsatisfactory job performance?
 - b. If you are confirmed as Solicitor General, will you reverse the demotion, reassignment, or termination of any DOJ personnel in the Office of the Solicitor General for their involvement in the investigations or prosecutions of individuals related to the January 6 Capitol riot if you learn that this was the sole basis for the demotion, reassignment, or termination?

RESPONSE: Any disciplinary actions towards Department personnel should be undertaken based on the facts of each situation in a manner consistent with Department policies, applicable law, and the Constitution.

3. In your opinion, is political affiliation alone, without other evidence of wrongdoing, misconduct, or unsatisfactory job performance, grounds for the demotion, reassignment, or termination of DOJ personnel?
 - a. If you are confirmed as Solicitor General, will you recommend or otherwise support the demotion, reassignment, or termination of any DOJ personnel in the Office of the Solicitor General for their political affiliation absent evidence of wrongdoing, misconduct, or unsatisfactory job performance?
 - b. If you are confirmed as Solicitor General, will you reverse the demotion, reassignment, or termination of any DOJ personnel in the Office of the Solicitor General for their political affiliation if you learn that this was the sole basis for the demotion, reassignment, or termination?

RESPONSE: Any disciplinary actions towards Department personnel should be undertaken based on the facts of each situation in a manner consistent with Department policies, applicable law, and the Constitution.

4. On January 21, 2025, Acting Deputy Attorney General Bove sent a memo to all DOJ employees indicating that DOJ would prosecute state and local actors who “do not comply with the Executive Branch’s immigration enforcement initiatives.”¹ The memo also announced the creation of the so-called “Sanctuary Cities Working Group,” tasked with identifying “state and local laws, policies, and activities that are inconsistent with Executive Branch immigration initiatives and, where appropriate, to take legal action to challenge such laws.”²
 - a. Did you participate in the drafting of this memo? If yes, please describe your involvement in its drafting and the dates of your involvement. Please provide the names of the other individuals who participated in its drafting.

RESPONSE: No.

- b. Did you have any knowledge that DOJ was drafting this memo before it was sent to DOJ employees on January 21, 2025? If yes, please describe what you knew about the memo and how you learned of it and the date on which you learned of it. Please include the names of any individuals from whom you learned this information.

¹ Mem. from Acting Dep. Att’y Gen. Emil Bove to all Dep’t of Justice Employees, *Interim Policy Changes Regarding Charging, Sentencing, and Immigration Enforcement* (Jan. 21, 2015), <https://www.documentcloud.org/documents/25501154-doj-all-staff-memo-jan-21/>.

² *Id.*

RESPONSE: No.

- c. Did you ever have discussions with anyone in the administration about the idea or possibility of moving DOJ employees to other sections, including the Sanctuary Cities Working Group? If yes, please describe your discussions and the dates of those discussions. Please provide the names of the other individuals with who you discussed this idea.

RESPONSE: No.

- d. If confirmed, will you affirmatively appeal or defend appeals relating to the prosecution of state or local officials in jurisdictions that have either enacted statutes or implemented policies barring those jurisdictions from honoring immigration detainees? If yes, please provide the legal basis for prosecuting those officials.

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation.

- e. If confirmed, will you affirmatively appeal or defend appeals relating to the prosecution of state or local officials in jurisdictions that have either enacted statutes or implemented policies that prohibit officials from sharing information about a noncitizen's release date, next court date, or address with federal immigration authorities? If yes, please provide the legal basis for prosecuting those officials.

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation.

- f. If confirmed, will you affirmatively appeal or defend appeals relating to the prosecution of state or local officials in jurisdictions that have either enacted statutes or implemented policies that prohibit federal immigration officers from accessing state or local law enforcement resources, including equipment, office space, databases, or property? If yes, please provide the legal basis for prosecuting those officials.

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the

posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation.

- g. In jurisdictions where such laws or policies have already been unsuccessfully challenged in federal courts, will DOJ bring additional appellate litigation? If yes, please provide the legal basis for bring such challenges.

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation.

5. On January 31, 2025, dozens of career DOJ employees who worked on criminal cases stemming from the January 6 Capitol riot were fired.³

- a. Who was involved in the decision to remove these officials? Please provide the names of the individuals involved.

RESPONSE: I do not know.

- b. Has anyone within DOJ ever spoken to you about, or mentioned, these terminations, forced resignations, or other adverse personnel changes? If yes, please provide the names of the individuals involved, the content of those discussions, and the dates those discussions occurred.

RESPONSE: No.

- c. Has anyone on the presidential transition team ever spoken to you about, or mentioned, these terminations, forced resignations, or other adverse personnel changes? If yes, please provide the names of the individuals involved, the content of those discussions, and the dates those discussions occurred.

RESPONSE: No.

- d. Has anyone in the White House ever spoken to you about, or mentioned, these terminations, forced resignations, or other adverse personnel changes? If yes, please provide the names of the individuals involved, the content of those discussions, and the dates those discussions occurred.

RESPONSE: No.

³ Kyle Cheney & Josh Gerstein, *DOJ Fires Dozens of Prosecutors who Handled Jan. 6 Cases*, POLITICO (Jan. 31, 2025), <https://www.politico.com/news/2025/01/31/doj-purges-prosecutors-january-6-cases-00201904>.

6. On February 5, 2025, Acting Deputy Attorney General Emil Bove reportedly sent an email to FBI workforce accusing FBI leadership of “insubordination,” and indicating that FBI leadership’s refusal to submit a list of FBI agents involved in the January 6 Capitol riot investigations caused him to expand his demand for a list of all FBI employees involved in any January 6 riot-related matter.⁴

a. Since President Trump announced he planned to nominate you to be Solicitor General in November 2024, have you communicated in any way with Emil Bove? If yes, please describe the mode, content, and dates of the communications.

RESPONSE: Until he joined the Department of Justice on January 20, 2025, Mr. Bove and I were both counsel representing President Trump on criminal matters. Between November 2024 and January 20, 2025, we had occasional communications by phone and email relating to that co-representation. These communications are subject to attorney-client privilege and attorney work product protection, among other privileges.

b. Since President Trump announced he planned to nominate you to be Solicitor General in November 2024, have you communicated in any way with Chad Mizelle? If yes, please describe the mode, content, and dates of the communications.

RESPONSE: I have had two in-person conversations with Mr. Mizelle since November 2024—a lunch meeting on January 3, 2025, and a brief face-to-face meeting in the afternoon of February 26, 2025. Other than those, I have had a few communications with Mr. Mizelle by phone or text message. I do not recall the precise dates.

c. Have you ever discussed with Emil Bove, Chad Mizelle, or anyone else, FBI personnel involved in investigations related to the January 6 Capitol riot? If yes, please describe the mode, content, and dates of the communications.

RESPONSE: No.

7. Since President Trump announced he planned to nominate you to be Solicitor General in November 2024, have you communicated in any way with Acting U.S. Attorney for the District of Columbia Edward R. Martin, Jr.? If yes, please describe the mode, content, and dates of the communications.

RESPONSE: No.

8. Since President Trump announced he planned to nominate you to be Solicitor General in November 2024, have you communicated in any way with any Justices of the United States Supreme Court? If yes, please describe the mode, content, and dates of the communications.

⁴ Josh Gerstein, *Justice Department Official Defends Demand for FBI Agent Names, Cites ‘Insubordination’*, POLITICO (Feb. 5, 2025), <https://www.politico.com/news/2025/02/05/justice-department-memo-fbi-insubordination-00202655>.

RESPONSE: No.

9. Since President Trump announced he planned to nominate you to be Solicitor General in November 2024, have you communicated in any way with any person associated with DOGE? If yes, please describe the mode, content, and dates of the communications.

RESPONSE: No.

10. If President Trump directs you to take an illegal action, how would you respond?

RESPONSE: I have no reason to believe that such a situation would actually occur, but I would uphold my oath to defend the Constitution.

11. If any official in the Department of Justice directs you to take an illegal action, how would you respond?

RESPONSE: I have no reason to believe that such a situation would actually occur, but I would uphold my oath to defend the Constitution.

12. If any member of the Administration directs you to take an illegal action, how would you respond?

RESPONSE: I have no reason to believe that such a situation would actually occur, but I would uphold my oath to defend the Constitution.

13. President Trump has said, “I have absolute right to do what I want to do with the Justice Department.”⁵ As a former Assistant United States Attorney, do you agree that a sitting president has absolute power? If yes, please explain your legal reasoning.

RESPONSE: I believe that the President’s authority over the Department of Justice falls within his “core constitutional powers” under Article II, as the Supreme Court held in *Trump v. United States*. I adhere to the Supreme Court’s holding, expressed in *Trump v. United States*, that “[i]nvestigative and prosecutorial decisionmaking is ‘the special province of the Executive Branch,’ and the Constitution vests the entirety of the executive power in the President, Art. II, § 1.” 603 U.S. 593, 620 (2024) (citation omitted). Accordingly, as the Supreme Court held, the President’s authority over the Department of Justice “implicates ‘conclusive and preclusive’ Presidential authority.” *Id.* at 621 (citation omitted). That authority, of course, is subject to certain constraints set forth in the Amendments to the Constitution, including the Bill of Rights and the Fourteenth Amendment.

⁵ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. ‘Look Very Bad,’* N.Y. TIMES (Dec. 28, 2017), <https://www.nytimes.com/2017/12/28/us/politics/trump-interview-mueller-russia-china-north-korea.html>.

- a. If not absolute, how much power do you believe the President has over the Department?

RESPONSE: As stated in my response to the above question, the President's power over the Department of Justice is set forth in Article II, § 1 of the U.S. Constitution. Like the power of other government officials, that authority is also subject to constraints set forth in the Amendments to the Constitution, including the Bill of Rights and the Fourteenth Amendment.

14. If you are confirmed as Solicitor General, how would you supervise people in the Department of Justice who have called for the investigation and prosecution of President Trump's political opponents?

RESPONSE: Any disciplinary actions towards Department personnel should be undertaken based on the facts of each situation in a manner consistent with Department policies, applicable law, and the Constitution.

15. Do you believe that there was any basis for the Department of Justice's investigations and prosecutions of President Trump?

RESPONSE: For the reasons stated in the various legal briefs that I and other members of the defense team filed in the criminal cases against President Trump, I do not believe that those investigations and prosecutions had a valid basis.

16. Since President Trump announced he planned to nominate you to be Solicitor General in November 2024, have you had access to, or reviewed, DOJ investigation materials, information, or other potential evidence about specific individuals or investigations? Have you had access to or reviewed any confidential government materials, information, or other potential evidence about specific individuals or investigations?

RESPONSE: No.

- a. If yes, please provide the date on which you accessed or reviewed those items and describe what you accessed or reviewed.
- b. If yes, have you discussed any of this information with current or former DOJ personnel, or anyone not associated with DOJ?

17. Have you spoken or corresponded with Elon Musk since President Trump announced he planned to nominate you to be Solicitor General in November 2024?

RESPONSE: No.

- a. If yes, provide the mode and content of all discussions and correspondences and the dates those discussions and correspondences occurred.

- b. If yes, at any point, did you discuss with Mr. Musk DOJ or matters related to DOJ, including personnel matters?
 - i. Did you ever discuss demotions, reassignments, or terminations of personnel, whether specific individuals or generally?
 - ii. Did you ever discuss potential personnel to be hired or appointed in any capacity at the DOJ? If yes to any of these questions, provide the content of those discussions and the dates those discussions occurred.
- c. Have you ever discussed with Elon Musk any of the investigations by of any of his affiliated companies by any federal agency?

RESPONSE: No.

18. Please provide your understanding of the Hatch Act. Do you believe that asking DOJ personnel their views about investigations or prosecutions to assess their political leaning would be a violation of the Hatch Act?

RESPONSE: In general, I understand that the Hatch Act prohibits government employees from engaging in certain types of political activities. In my career as a federal prosecutor and an attorney in private practice, I have not had occasion to consider the specific scenario you have raised. If confirmed, I would consult with relevant Department personnel and work to ensure the Department is complying with applicable legal obligations, including the Hatch Act.

19. Will you commit to consulting with career officials at DOJ regarding your potential conflicts of interest?

RESPONSE: In the event of any potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations.

20. Will you follow the guidance of career officials at DOJ regarding your potential conflicts of interest and recusals?

RESPONSE: Please see my answer to the previous question.

21. During your confirmation hearing, you refused to answer whether or under what circumstances it would be justified for an elected official, such as President Trump, to defy a federal court order.

- a. Under what circumstances would it be acceptable for an elected official to defy a federal court order?

RESPONSE: As I stated in response to questions from Ranking Member Durbin and Senator Hawley at the hearing, generally, if there is a court order that directly binds a federal or state official who is a party to the case and subject to the court's jurisdiction, the official should follow it. However, there may be extraordinary cases—such as the historical examples of the *Dred Scott* and *Korematsu* decisions—which render it difficult to make an exceptionless, categorical statement.

- b. How can an elected official who defies a federal court order be held in contempt?

RESPONSE: I have not recently studied the legal standards or procedures for seeking to hold an elected official in contempt, so I cannot directly address them.

- c. Can you unequivocally state that elected officials must comply with federal court orders?

RESPONSE: I have not recently studied the legal standards or procedures for seeking to hold an elected official in contempt, so I cannot directly address them.

22. During your tenure in private practice as Principal of James Otis Law Group, you represented President Trump in criminal and civil matters.

- a. How did President Trump retain you and James Otis Law Group as his counsel?

RESPONSE: I received word that President Trump's legal team was seeking appellate attorneys, and we made a pitch to them as we would any other client.

- b. How many total hours did you spend on each matter related to President Trump?

RESPONSE: I have not calculated the total number of hours I spent on matters representing President Trump. They likely comprise the majority of hours that I billed during the time period that I have represented him.

- c. How many hours did you spend on each matter related to President Trump last year?

RESPONSE: I have not calculated the total number of hours I spent on matters representing President Trump last year. They likely comprise the majority of hours that I billed last year.

- d. As a firm client, did President Trump pay your standard billing rate?

RESPONSE: As is not uncommon for clients with significant volume of business, President Trump received a reasonable discount from my premium billing rate.

- e. As a firm client, did anyone other than President Trump, whether an individual or other entity, pay for your and/or James Otis Law Group's legal services on his behalf?

If yes, please provide the amount, the name of the individual or entity, and matter for the payment.

RESPONSE: As noted in my OGE-278 form, my fees for matters representing President Trump were paid by Save America PAC. I have not calculated the total amount paid, but it has been publicly reported by Save America PAC.

- f. Have you received any payments from President Trump unrelated to your work for him as client? If yes, please provide the amount and the reason for the payment?

RESPONSE: No.

- g. Have you received any payments from any person or entity on behalf of President Trump unrelated to your work for him as client? If yes, please provide the person's name, their relation to President Trump, the amount of the payment and the reason for the payment?

RESPONSE: No.

- h. Does President Trump, or any affiliated individual or entity, owe your firm for any unpaid bills? If yes, please provide the amount owing and the matter of the unpaid bill.

RESPONSE: No.

23. At any point during your representation of President Trump, did you discuss a role in his administration with him or any person associated with him? Please describe the nature of the discussion, the name of the individual, and the mode and date of the discussion.

RESPONSE: I respectfully decline to disclose the contents of communications with President Trump and/or his legal team on grounds of attorney-client privilege and attorney work product protection, and other applicable privileges.

24. Please respond to the following questions in as much detail as possible.

- a. What is your opinion of abortion? Are there any circumstances in which you believe a woman may have an abortion?

RESPONSE: Consistent with the teachings of the Catholic Church, I believe that human life begins at conception and that procured abortion involves the taking of innocent human life. I agree with President Trump that every such abortion is a tragedy.

- i. How do you define bodily autonomy?

RESPONSE: I adhere to the vision of bodily autonomy set forth in then-Archbishop Karol Wojtyla’s book *Love and Responsibility*.

- b. Do you believe that there are circumstances pursuant to which women, including minors, must share information about their menstrual cycle with government officials or law enforcement officials?

RESPONSE: I have not researched whether there are any federal, state, or local recordkeeping or reporting requirements on this question. I am not aware of any such requirements at this time.

- i. Under what circumstances is it appropriate for the government to compel women, including minors, to share information about their menstrual cycle?

RESPONSE: I have not researched whether there are any federal, state, or local recordkeeping or reporting requirements on this issue. I am not aware of any circumstances where that would be necessary or appropriate at this time.

- c. What is your opinion of contraceptives and birth control? Are there any circumstances in which you believe a woman may use contraceptives and birth control?

RESPONSE: I adhere to the teachings of the Catholic Church on questions of contraceptives and birth control. Those teachings are summarized in the *Catechism of the Catholic Church*.

- d. What is your opinion of gender-affirming care? If you oppose gender-affirming care, please explain why.

RESPONSE: I adhere to the teachings of the Catholic Church on questions of medical ethics, including those relating to the treatment of transgender individuals.

- e. Is it appropriate for school officials or sports coaches to verify the sex and gender of minor students? If yes, please describe how school officials or sports coaches would verify the sex and gender of minor students and how they could conduct such verifications in a manner that does not invite sexual abuse or traumatize young people.

RESPONSE: Consistent with my recent advocacy on behalf of the Legislative Leaders of the State of Arizona in defending Arizona’s Save Women’s Sports Act, I support the traditional practice of separating school sports teams and competitions based on biological sex. As discussed in briefs filed in that litigation, I believe that such organization by biological sex can be conducted without intrusive verification procedures—as educational institutions have done for many decades, and as Arizona’s legislation does—and I personally support that approach.

- f. What is your opinion of same-sex marriage?

RESPONSE: I adhere to the teachings of the Catholic Church on questions of marriage, including same-sex marriage. Those teachings are summarized in the *Catechism of the Catholic Church*.

g. What is your opinion of miscegenation?

RESPONSE: Consistent with the teachings of the Catholic Church, I believe that marriages between persons of different races and ethnicities should be celebrated equally with other marriages.

h. What is your opinion of racial discrimination?

RESPONSE: I oppose racial discrimination and believe that persons should be treated equally regardless of race or color.

i. Do you believe that there is racial discrimination in the private sector?

RESPONSE: Yes.

ii. Do you believe that there is racial discrimination in the public sector?

RESPONSE: Yes.

iii. Do you believe that there is racial discrimination in education?

RESPONSE: Yes.

i. What is your opinion of President Trump's January 27, 2025 Executive Order directing the Department of Defense to exclude transgender people from military service?⁶

RESPONSE: I have not reviewed that Executive Order. I respectfully decline to address matters on which I might be called to take official action if confirmed.

j. Do you agree with Secretary of Defense Hegseth that women should not serve in combat roles?⁷

RESPONSE: I am not familiar with Secretary Hegseth's views on women serving in combat. I understand from media reports that this question does not reflect his current views or the policies of the Department of Defense. I have not personally

⁶ Exec. Order No. 14183, 90 Fed. Reg. 8757 (Feb. 3, 2025).

⁷ Emma Tucker et al., *Trump's defense secretary pick said women shouldn't be in combat roles. These female veterans fear what comes next*, CNN (Nov. 14, 2024), <https://www.cnn.com/2024/11/14/us/military-women-pete-hegseth-defense-secretary/index.html>.

studied or researched that question, and I would generally defer to military officials on questions relating to combat readiness.

25. Acting U.S. Attorney Ed Martin posted from the official X account of the United States Attorney's Office for the District of Columbia: "As President Trumps' lawyers, we are proud to fight to protect his leadership as our President and we are vigilant in standing against entities like the AP that refuse to put America first."⁸

a. Do you agree with Acting U.S. Attorney Ed Martin's statement? Please explain why you do or do not.

RESPONSE: I am not familiar with Mr. Martin's statement, and I am not aware of its context or reference. If confirmed, I will vigorously defend actions of the federal Executive Branch, including President Trump's policies and executive orders, when reasonable grounds are available to do so.

b. If you are confirmed as Solicitor General, is your client President Trump? Please explain your answer.

RESPONSE: The client of the attorneys at the Department of Justice is the United States of America and its people. Their fidelity is to the Constitution and laws of the United States.

c. You previously served as President Trump's personal attorney. Do you see your role as Solicitor General as a continuation of your representation of Donald Trump?

RESPONSE: No.

d. Whose interests does the Solicitor General serve?

RESPONSE: The Solicitor General serves the Constitution, laws, and the people of the United States.

26. As part of your work with President Trump, you represented him in matters in which the DOJ was an adverse party.

a. Will you commit to consulting with career officials at DOJ regarding matters where you previously represented an adverse party, including President Trump?

RESPONSE: Yes.

b. Do you commit to recusing yourself on any matters where you represented President Trump?

⁸ U.S. Attorney DC (@USAO_DC), X (Feb. 24, 2025, 3:18PM), https://x.com/USAO_DC/status/1894119675786621225.

RESPONSE: In the event of any potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations.

- c. Do you commit to recusing yourself on any matters involving President Trump?

RESPONSE: In the event of any potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations.

- d. Do you commit to recusing yourself on any matters involving a person involved in the investigations or prosecutions of President Trump, even if the matter is unrelated to those investigations or prosecutions or President Trump?

RESPONSE: In the event of any potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations.

27. Since President Trump announced his intention to nominate you in November 2024, have you had communications with anyone at DOJ about investigations involving President Trump? If yes, please provide the names of the individuals involved and the content of those discussions. Please also provide the date and mode of the communication.

RESPONSE: No.

28. Since President Trump announced his intention to nominate you in November 2024, have you had communications with anyone at DOJ or the administration, including the transition team, about the Jack Smith investigations? Had you had communications prior to your nomination? If yes, please provide the names of the individuals involved and the content of those discussions. Please also provide the mode and date of the communication.

RESPONSE: No, except that I litigated directly against Jack Smith and the lawyers of the Special Counsel's Office on behalf of President Trump prior to my nomination, which involved communications with members of that legal team.

29. Have you been involved in any way in the decision not to make public Volume 2 of Jack Smith's report? Please provide the nature of your involvement.

RESPONSE: I communicated with President Trump's litigation team that opposed the public disclosure of Volume 2 of that report in court. Any communications in that connection are protected from disclosure by attorney-client privilege, attorney work

product, joint defense privilege, common interest doctrine, and/or other applicable privileges.

30. Have you ever communicated with Kash Patel about Volume 2 of Jack Smith's report? Please describe the content of those discussions. Please also provide the mode and date of the communication.

RESPONSE: No.

31. Have you ever communicated with Kash Patel about his grand jury testimony in the prosecution against President Trump for the handling of classified documents? Please describe the content of those discussions. Please also provide the mode and date of the communication.

RESPONSE: No.

32. Have you ever had communications with Kash Patel related to his grand jury testimony in the prosecution against President Trump for the handling of classified documents or Volume 2 of Jack Smith's report? Have you ever advised him about matters? If yes to either question, please provide the date and content of those communications.

RESPONSE: No.

33. Would you agree with me that political violence is toxic to democracy, whether such violence comes from the left or the right?

RESPONSE: I oppose the use of violence to achieve domestic political goals, regardless of the political perspective that violence is used to advance.

- a. When, if ever, is political violence acceptable?

RESPONSE: As noted above, in domestic politics, I oppose the use of violence to achieve domestic political goals, regardless of the political perspective that violence is used to advance. In matters of international relations, I adhere to the Catholic just-war theory regarding the justification of armed force.

- b. Are social media posts depicting a person decapitating the heads of elected officials with a chainsaw appropriate?

RESPONSE: I cannot directly address social-media posts that I have not viewed. In general, American citizens have a fundamental right under the First Amendment to employ powerful rhetoric and vivid images in political discourse, and I strongly support that right, subject to the established exception for true threats.

- c. If you are confirmed as Solicitor General, what actions will you take to address political violence?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me provide a position on behalf of the Department regarding this question. However, if confirmed, I will carefully review and consider the applicability of any federal law, the posture of any such case, the position held by the Government, and uphold my constitutional duty in any such litigation relating to this question.

34. Is *Griswold v. Connecticut*, 381 U.S. 479 (1965), binding precedent?

RESPONSE: *Griswold v. Connecticut* is binding precedent of the Supreme Court and entitled to respect as such.

a. Do you agree with the Supreme Court's legal reasoning and conclusion in this case?

RESPONSE: *Griswold v. Connecticut* is binding precedent of the Supreme Court and entitled to respect as such.

35. Is *Lawrence v. Texas*, 539 U.S. 558 (2003), binding precedent?

RESPONSE: *Lawrence v. Texas* is binding precedent of the Supreme Court and entitled to respect as such.

a. Do you agree with the Supreme Court's legal reasoning and conclusion in this case?

RESPONSE: *Lawrence v. Texas* is binding precedent of the Supreme Court and entitled to respect as such.

36. Is *Obergefell v. Hodges*, 576 U.S. 644 (2015), binding precedent?

RESPONSE: *Obergefell v. Hodges* is binding precedent of the Supreme Court and entitled to respect as such.

a. Do you agree with the Supreme Court's legal reasoning and conclusion in this case?

RESPONSE: *Obergefell v. Hodges* is binding precedent of the Supreme Court and entitled to respect as such.

b. Supreme Court Justice Antonin Scalia wrote a dissenting opinion in *Obergefell v. Hodges*. Do you agree with the reasoning in Justice Scalia's dissenting opinion?

RESPONSE: The majority opinion in *Obergefell v. Hodges* is binding precedent of the Supreme Court and entitled to respect as such.

37. If confirmed as Solicitor General, what would you consider or what process would you undertake before changing the litigation position maintained by the previous Administration?

- a. What circumstances warrant changing the litigation position of the United States advanced by a prior Administration?

RESPONSE: It is difficult to answer this question in the abstract. As a general matter, the Department of Justice solicits views from entities within the Executive Branch that have subject matter expertise or a stake in the dispute. I would consider these, along with the posture of the case and my best reading of controlling precedents, among other factors, and uphold my constitutional duty in any future litigation.

38. If confirmed as Solicitor General, what would you consider or what process would you undertake when making decisions about litigation positions of the United States regarding reproductive rights and the constitutional right to privacy?

RESPONSE: See my response to the previous question.

39. Decades of research and the FDA's expert judgment have determined that mifepristone is safe and effective for terminating early pregnancies. The FDA has maintained that judgment across five presidential administrations. In the consolidated cases of *FDA v. Alliance for Hippocratic Medicine* and *Danco Laboratories, LLC v. Alliance for Hippocratic Medicine*, Nos. 23-235, 23-236, Solicitor General Prelogar defended the FDA's scientific judgment about the safety and effectiveness of mifepristone and about the conditions required to assure the drug's safe use.

- a. As Solicitor General, will you continue defending the FDA's expert judgment relating to mifepristone?
- b. Do you believe that elected officials are better positioned than the FDA to make the scientific and medical determinations about the safety and effectiveness of medications? If yes, please explain why.

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to these questions. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any relevant litigation.

40. The Emergency Medical Treatment and Labor Act (EMTALA), which was enacted in 1986, requires hospitals to provide abortion care when it constitutes necessary stabilizing treatment for a person's emergency medical condition. In the consolidated cases of *Moyle v. United States* and *Idaho v. United States*, Nos. 23-726, 23-727, Solicitor General

Prelogar represented the United States in arguing that EMTALA, preempts state laws that directly conflict with this requirement of EMTALA.

- a. As Solicitor General, will you continue arguing the legal position advanced by Solicitor General Prelogar in cases relating to EMTALA and conflicting state laws?

RESPONSE: See my response to the previous question.

41. Are there federal agencies that you believe should be eliminated? If yes, please state which agencies and why.

RESPONSE: I have not researched or studied whether any particular federal agency or agencies should be eliminated, and I have no opinion to offer on that question.

42. Do you believe that President Trump won the 2020 election?

RESPONSE: I believe that the conduct of the 2020 Presidential election was deeply flawed. I acknowledge that President Biden was certified as the victor and served as the 46th President of the United States.

43. The 22nd Amendment says that “no person shall be elected to the office of the President more than twice.”⁹

- a. Do you agree that President Trump was elected to the office of the President in the 2016 election?
- b. Do you agree that President Trump was elected to the office of the President in the 2024 election?
- c. Do you agree that the 22nd Amendment, absent a constitutional amendment, prevents Trump from running for a third presidential term?
- d. If confirmed as Solicitor General, would you advance a legal argument to the Supreme Court that President Trump may run for a third presidential term?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will carefully review and consider the applicability of any federal law, the posture of any such case, the position held by the Government, and uphold my constitutional duty in any such litigation.

⁹ U.S. CONST. amend. XXII.

Questions for the Record from Senator Alex Padilla
Senate Judiciary Committee
“Nominations Hearing: Harmeet Dhillon, Aaron Reitz, and John Sauer”
Thursday, February 26, 2025

Questions for Mr. Sauer

1. At your hearing, you expressed alarming views about the Separation of Powers as enshrined in our Constitution.
 - a. Is the Trump Administration allowed to violate or decline to follow a lawful court order?

RESPONSE: As I stated in response to questions from Ranking Member Durbin and Senator Hawley at the hearing, generally, if there is a court order that directly binds a federal or state official who is a party to the case and subject to the court’s jurisdiction, the official should follow it. However, there may be extraordinary cases—such as the historical examples of the *Dred Scott* and *Korematsu* decisions—which render it difficult to make an exceptionless, categorical statement.

- b. Are government officials, including federal government officials, permitted to decline to follow a court order or binding Supreme Court precedent where they disagree with the Court’s decision?

RESPONSE: See my response to the previous question. I believe that binding precedent of the Supreme Court is entitled to respect as such.

- c. Do you believe that the Executive Branch or the Judicial Branch has the responsibility and authority to interpret federal laws and the Constitution? If their interpretations differ, whose wins out?

RESPONSE: See my response to question 1(a) above. Both coordinate Branches have the responsibility to interpret the Constitution and laws of the United States.

- d. What role does the Legislative Branch play in checking the powers of the Executive Branch?

RESPONSE: The checks that the Legislative Branch provides to the Executive Branch are set forth in Articles I and II of the Constitution.

- e. What role does the Judicial Branch play in checking the power of the Executive and Legislative Branches?

RESPONSE: The checks imposed by the Judicial Branch on the other two Branches are provided in Article III of the Constitution.

- f. If confirmed, would you support efforts to overturn long-standing Supreme Court precedents, such as those protecting voting rights, abortion rights, or protections against discrimination?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me to provide a position on behalf of the Department and the United States in response to this question. If I am confirmed, I will examine the posture of any such case, the position held by the Government, and any applicable law, and uphold my constitutional duty in any such litigation.

- g. If asked to advance an argument before the Supreme Court that goes against the Constitution or binding Supreme Court precedent, what will you do?

RESPONSE: See my response to question 1(f) above.

- h. Will you commit to applying the same legal principles to cases involving political allies of the President as you do to cases involving his political adversaries?

RESPONSE: Yes, if confirmed I commit to applying the law evenly regardless of political opinions.

- i. Do you believe there are any legal limits on a President's ability to use the military or law enforcement against political opponents?

RESPONSE: I agree with the statement made by the Attorney General in her hearing, that nobody will be prosecuted because of their political beliefs, which includes political opponents of the President as it does to his supporters.

- j. What is the current Supreme Court precedence on the birthright citizenship clause of the Fourteenth Amendment?

RESPONSE: As I stated in the confirmation hearing, it would be inappropriate for me to offer opinions on matters that might come before me in an official capacity if I am confirmed, especially those that I have not fully researched or studied.

Senator Peter Welch
Senate Judiciary Committee
Written Questions for D. John Sauer
Hearing on “Nominations”
Wednesday, February 26, 2025

1. In your nomination hearing, you stated that you would consult with career ethics staff at the Department of Justice regarding potential conflicts of interest. Do you commit to following their advice regarding potential conflicts of interest?

RESPONSE: If confirmed, in the event of any potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations.

2. Also, in your nomination hearing, you stated that you “have criticized that doctrine in many of the legal briefs” you have filed. The doctrine you were referencing was substantive due process.

- a. Please describe your understanding of substantive due process.

RESPONSE: My understanding of substantive due process is reflected in the legal briefs that I have submitted to the Committee. I refer to those briefs for my understanding of that doctrine.

- b. What is your view of the validity of the doctrine of substantive due process?

RESPONSE: I adhere to the view of constitutional interpretation advanced by the late Justice Scalia, which focuses on the original public meaning of the Constitution. As an advocate, I frequently make arguments using other interpretive theories as well, in attempt to persuade the courts.

3. How will you address situations where your personal beliefs conflict with settled constitutional law?

RESPONSE: If confirmed, my role will be to represent the views and interests of the United States, consistent with the Constitution and laws of the United States, and not to advocate for my own personal beliefs.

Questions for the Record

D. John Sauer – Nominee to be Solicitor General

Sen. Adam Schiff (CA)

1. Solicitors General in past Republican and Democratic Administrations have long followed DOJ ethics guidance, which states that attorneys must “disqualify [themselves] from any case in which [they] participated before entering government.” You were the President’s personal defense attorney, representing him in several cases, including a case before the United States Court of Appeals for the District of Columbia Circuit, in which you argued that the President could go so far as to direct SEAL Team Six to assassinate a political opponent, and still be immune from being criminally liable if he is not “first impeached and convicted by the Senate.”

Per my questions in your nomination hearing on February 26, 2025, and recent reporting that the Justice Department has assigned politically appointed newcomers decisionmaking power over sensitive matters, including recusal decisions, please respond to the below questions:

- a. Do you acknowledge that it would be a conflict of interest if you were asked to supervise cases involving the President, given your representation of him as his defense attorney?

RESPONSE: No. For example, based on my understanding of ethical rules, my prior representation of the President in his personal capacity would not necessarily disqualify me from participation in other matters that involve the President in his official capacity. In the event of any potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations.

- b. If confirmed, will you commit to following longstanding DOJ guidance and recuse yourself from any agency action involving the criminal case of *United States of America v. Donald J. Trump* or any other case in which you represented President Trump as his defense attorney?

RESPONSE: In the event of any potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations.

- c. Will you inform this Committee of any and all recusal decisions you make?

RESPONSE: I will follow appropriate DOJ guidelines and policies to inform Congress on recusal decisions made in the Solicitor General’s office.

2. On July 21, 2021, then-Attorney General Garland issued a memorandum on “Department of Justice Communications with the White House,” more commonly referred to as the White House Contacts policy. This policy should govern all communications between

Justice Department and White House personnel and is critical to safeguarding the DOJ's criminal and civil law enforcement decisions and legal judgements from partisan influences. According to public reports, the White House has now updated its own guidance to permit the President and select others to initiate conversations with DOJ about specific criminal or civil cases or investigations. This goes beyond even the first Trump administration, and now blesses, for the first time, the President's engagement with DOJ on specific types of cases, whether criminal or civil.

- a. Do you commit to upholding the Department's longstanding policy, as outlined in the 2021 memo, *not* to "advise the White House concerning pending or contemplated criminal or civil law enforcement investigations or cases unless doing so is important for the performance of the President's duties and appropriate from a law enforcement perspective?"

RESPONSE: I have not reviewed the policies referred to in this question. If I am confirmed, I will plan to comply with policies adopted by President Trump and Attorney General Bondi for the Department of Justice.

3. On February 9, 2025, Vice President Vance posted on X that "judges aren't allowed to control the executive's legitimate power." This troubling statement raises concerns that the Trump administration will defy court orders, which could pose a Constitutional crisis.
 - a. If you are instructed by the President, the Vice President, or any White House personnel – directly or indirectly – to argue that the Executive Branch has the authority to either defy or ignore a court order, will you stand up to and object to such an instruction in order to preserve the constitution's separation of powers?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me provide a position on behalf of the Department on possible future litigation positions. However, if confirmed, I will carefully review and consider the applicability of any federal law, the posture of any such case, the position held by the Government, and uphold my constitutional duty in any such litigation.

4. The 22nd Amendment states that "No person shall be elected to the office of the President more than twice."
 - a. Can a person be elected to the office of the President more than twice?

RESPONSE: No.

- b. Will you commit to not advancing arguments in court that violate the 22nd Amendment of the Constitution of the United States, if confirmed?

RESPONSE: As I have yet to be confirmed as Solicitor General, it would be inappropriate for me provide a position on behalf of the Department on possible future litigation positions. However, if confirmed, I will carefully review and consider the applicability of any federal law, the posture of any such case, the position held by the Government, and uphold my constitutional duty in any such litigation.

- c. Do you agree that the 22nd Amendment, absent a constitutional amendment, prevents President Trump from seeking a third presidential term?

RESPONSE: Section 1 of the Twenty-Second Amendment states, in part, “No person shall be elected to the office of the President more than twice....” I have not reviewed any case law or other authorities addressing or interpreting this Amendment, nor formed an opinion on how it might apply it to any particular facts.