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HEARING ON THE NOMINATIONS OF RHEA SUN SUH TO BE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR; VICTORIA BAECHER WASSMER TO BE CHIEF FINANCIAL OFFICER, U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA); ROY K.J. WILLIAMS TO BE ASSISTANT SECRETARY OF COMMERCE FOR ECONOMIC DEVELOPMENT, U.S. DEPARTMENT OF COMMERCE; AND THOMAS A. BURKE TO BE ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT, EPA

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

DECEMBER 17, 2013

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED THIRTEENTH CONGRESS
FIRST SESSION

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HEARING ON THE NOMINATIONS OF RHEA SUN SUH TO BE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR; VICTORIA BAECHER WASSMER TO BE CHIEF FINANCIAL OFFICER, U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA); ROY K.J. WILLIAMS TO BE ASSISTANT SECRETARY OF COMMERCE FOR ECONOMIC DEVELOPMENT, U.S. DEPARTMENT OF COMMERCE; AND THOMAS A BURKE TO BE ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT, EPA

TUESDAY, DECEMBER 17, 2013

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The Committee met, pursuant to notice, at 2:34 p.m. in room 406, Dirksen Senate Building, Hon. Barbara Boxer (chairman of the Committee) presiding.

Present: Senators Boxer, Cardin, Whitehouse, Vitter, Crapo, Inhofe, Fischer, Boozman, and Barrasso.

Senator BOXER. Today, the Environment and Public Works Committee will consider a number of nominations.

I have discussed with Senator Vitter the fact that we have two Senators present who are on terrible time crunches. Before we make our opening statements these two Senators are here to speak on behalf of nominees. I am going to ask Senator Bennet to start.

OPENING STATEMENT OF HON. MICHAEL BENNET, U.S. SENATOR FROM THE STATE OF COLORADO

Senator BENNET. Thank you, Chairwoman Boxer and Senator Vitter. It really is a great privilege to be here today, particularly to be here next to my colleague, Senator Brown, and a particular pleasure to appear before you in support of Rhea Suh to be our next Assistant Secretary for Fish, Wildlife and Parks at the U.S. Department of the Interior, one of the great jobs in the U.S. Government.

Rhea's parents came to this country from South Korea and worked hard to build a good life for their family. They moved to Boulder, Colorado, where Rhea was born and raised. Learning to fish in Lake Granby or camp in Rocky Mountain National Park, Rhea developed an early passion for Colorado's natural resources.

It is a passion that has driven much of her career. From an early age, Rhea worked hard and excelled in school. She graduated from Barnard College and earned a Masters in Education from Harvard University. She has also received both Fulbright and Marshall scholarships.

Rhea has worked in a diverse range of roles. She served the New York City Public School system as a high school science teacher. I can tell you, as a former school superintendent myself, it is hard to come up with a better testament to someone's character than that.

Rhea advised former Senator Ben Nighthorse Campbell, a Republican, on public lands, energy and environmental issues. In that role, she worked effectively across the aisle to pass legislation critical to Colorado.

She also worked at both the Packard and Hewlett Foundations where she planned and executed major national conservation initiatives.

Most recently, Rhea was confirmed in 2009 by this Senate as Assistant Secretary for Policy, Management and Budget at the Interior Department. In this capacity, she has overseen the Department's human capital, business and budget management. It is a tough job and Rhea has done it for 4 years now with skill and poise, earning praise across the country for her management style.

I know Rhea will approach this new position with an emphasis on collaboration and common sense, a signature of the State in which she was raised and which I am now privileged to represent. She will work closely with local officials, farmers, ranchers and environmentalists in support of policies that both promote economic growth and safeguard our natural resources.

I know she will work hard to make sure that future generations of Coloradoans, like Rhea herself, continue to be able to enjoy fishing, hiking, camping and the great outdoors.

Thank you for your time, particularly Madam Chairwoman, for your consideration in letting me go first. I hope the Senate will swiftly confirm Rhea Suh.

Thank you.

Senator BOXER. Thank you, Senator. I know you are introducing another nominee across the hall, so go forward.

Senator Brown, we are delighted to see you here at this Committee. Please proceed.

OPENING STATEMENT OF HON. SHERROD BROWN, U.S. SENATOR FROM THE STATE OF OHIO

Senator BROWN. Madam Chair, it is an honor to be before your Committee, and Senators Vitter and Crapo, two Banking Committee colleagues of mine with whom we have worked well.

We come before Committees and introduce people from our States with some frequency, especially if you represent a State as large as the Chairperson's. Many times I do not know the person

very well or have only met the nominee once or twice. However, I consider Mayor Williams a friend.

I remember when my wife and I had brunch with him and Sonja, his wife, in Youngstown soon after he took the oath of office as Mayor of Youngstown. I have worked with him up close and watched him up close for 7 years since. I have seen his progress as a young Mayor of Youngstown to his work as the auto czar where he is very sensitive to the issues that matter so much for our State to his appointment now to the Department of Commerce with special focus on EDA.

I look at Youngstown—Senator Portman knows this also—and the comeback, a city that once consisted of 180,000 people but is now less than half that size, but I can see all kinds of turnaround examples in the city of Youngstown and the Mahoning Valley along sort of the steel corridor of Route 422.

I have seen his work with the Youngstown business incubator which attracted EDA moneys because it is known as one of the best incubators in the country and has been very successful bringing young people back to Youngstown; for entrepreneurs in starting businesses and leveraging Federal dollars and serious numbers of companies with increasing numbers of employees.

I saw his work with the Recovery Act and enforcement of trade rules to attract B&M Star Steel, a French company, to invest in Mahoning Valley hundreds and hundreds of steel jobs in Youngstown, Ohio. I saw what he did as Mayor and then as auto czar. There is a more technical term for that but that is how most of us refer to the work he did for these communities after we went through all the difficulties in the auto industry in Lordstown, Ohio which produces the Chevy Cruz. My wife drives one, my brother drives one, three people in my office drive one and my daughter drives a Chevy Cruz, all made by Ohio workers in Youngstown, Ohio. He gets a lot of the credit for that.

After he became the auto czar and he looked at the number of auto plants that had shut down, he understood there was sort of a race between developers buying these old auto plants, tearing them, selling them for scrap and making a serious amount of money or working with local communities, local businesses and local labor unions to preserve these plants and sell them to a developer who would reindustrialize them.

We are seeing one of those in Dayton right now. Senator Portman, the Governor and I and the Dayton Development Coalition are working to reindustrialize one of these plants in Dayton. We are seeing examples of that around the country.

My point, as I wrap up, is that Jay Williams understands the partnership between the Federal Government and what we can do with EDA; the partnership between the Federal Government and local elected officials. He knows how to do that better perhaps than any public official I know in my State.

It is my thrill to be able to introduce Jay and have him come forward in a moment for testimony after Senator Portman speaks.

I thank you, Madam Chair, for being allowed to come before your Committee.

Senator BOXER. Thank you, Senator.

We have heard such great personal stories from both of our Senators. Now we will turn to Senator Portman.

Just so our colleagues know, we are taking the Senators not on the Committee first and then we will go to opening statements.

Senator Portman.

OPENING STATEMENT OF HON. ROB PORTMAN, U.S. SENATOR FROM THE STATE OF OHIO

Senator PORTMAN. Thank you, Madam Chairwoman. I appreciate it. It is good to be with you, Ranking Member Vitter and other Committee members, today.

I am here to join my colleague, Senator Brown, in introducing a fellow Ohioan, the Mayor of Youngstown, Jay Williams.

He has been nominated for a very important job, Assistant Secretary of Commerce for Economic Development at the Department of Commerce. In our view, I think it is fair to say the most important job we have right now is to bring the jobs back. This Commerce Department position is critical to that.

Too many workers in my State of Ohio and around this country have been out of a job for too long, some for months, some for years, and Jay understands that. He has not only seen it firsthand during his days as Mayor of Youngstown, he has spent much of his life trying to improve the economic conditions of all Americans.

If confirmed, I look forward to working with him and his colleagues over there to keep the economic development projects moving forward on the main streets in Ohio and in your States around the country.

Mayor Williams is a son of Ohio, born and raised in Youngstown, took a degree in Finance at Youngstown State University, a fine institution and turned to a career in banking where he was at the Federal Reserve Bank of Cleveland but was also Vice President of First Place Bank. He understands the difficulty of getting credit, finding a loan and how small businesses struggle with that.

He has made impacts at various positions. He served as Mayor of Youngstown from 2006 to 2011. There he focused a lot on economic development. He wasn't always focused on making himself popular; he was focused on doing the right thing. I think from the Right and Left, sometimes he got a bit of input about that but his job was to figure out how to turn around things in the Mahoning Valley. He took on that challenge directly.

He worked with Youngstown State University, his alma mater, which has a terrific internship program. I visited his incubator program which Senator Brown talked about. It is truly one of the incubators that are working well around the country.

He has worked with the auto companies, as noted, but also with some of our steel fabricators and our steel mill in town to bring more jobs.

He received the John F. Kennedy New Frontier Award in 2007, an award given by the JFK Library Foundation annually to recognize two people in the entire country under the age of 40 whose contributions in elective office, community service or advocacy demonstrate the impact and value of public service in the spirit of JFK.

In 2011, he became Executive Director of the Office of Recovery for Auto Communities and Workers, otherwise known as the auto

czar at the Department of Labor. His job was to work with local communities, including some in Ohio, which were impacted and benefited from some of the improvements in the auto industry. In that role, he worked hand in hand with struggling communities trying to figure out how to get back on their feet.

Last year, he was detailed to the White House to serve as Deputy Director of the Office of Intergovernmental Affairs to work with fellow mayors and other local leaders across the country.

He has already given a lot to the people of Youngstown, to Mahoning Valley, to our State of Ohio and to our country. I have no doubt he is ready to give more. I fully support his nomination to serve as Assistant Secretary of Commerce for Economic Development and to lead the Economic Development Administration.

Thank you for letting me come by today.

Senator BOXER. Thank you, Senator, so much. We know that you are also on a tough schedule, so thank you for being here.

You should both be proud to have the Senators come and speak for you. I think it is a great tribute to you both.

OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Today we will consider a number of nominations. The confirmation of qualified individuals to lead agencies is such an important responsibility of the Senate. I believe it is critical we move forward with these nominations so that our agencies can fulfill their missions to serve the American people.

Jay Williams, as we have heard, brings over 20 years of experience in both the private and public sectors which will serve him well as the Assistant Secretary of Commerce for the Economic Development Administration, an agency I truly believe had made quite a difference in the lives of our communities.

He is currently the Executive Director of the Office of Recovery for Auto Communities and Workers at the Department of Labor. As we heard, he has played a critical role in helping States and cities rebuild their manufacturing potentials, creating job opportunities and encouraging economic development.

Previously, he was the Mayor of the city of Youngstown, Ohio. He worked there with the private sector as well.

If confirmed, he will be responsible for leading the EDA, an agency whose mission is to help economically distressed communities.

Next, I want to welcome Rhea Sun Suh, the nominee to be Assistant Secretary for Fish, Wildlife and Parks. We heard about you from Senator Bennet. You worked for Ben Nighthorse Campbell and have had a long career in working to conserve our Nation's most precious resources, including the time you served as Assistant Secretary for Policy, Management and Budget at the Department of the Interior. You have served there for 4 years.

If confirmed, you would help to oversee the Fish and Wildlife Service, the guardian of our Nation's natural treasures and wildlife and help support tourism and recreation that boost our economies at home. In fiscal year 2011, national wildlife refuges pumped $2.4 billion into the economy and supported over 35,000 jobs.

In my home State, the Fish and Wildlife Service manages dozens of refuges, protects iconic species like the bald eagle and the Cali-

fornia condor and helps manage millions of birds that migrate through our State every year.

The Committee is also considering the nomination of Dr. Thomas Burke to be Assistant Administrator Research and Development at the Environmental Protection Agency which conducts research and provides expertise on science and tech issues to many EPA programs.

I think we all believe that strong science is the foundation to make sure that EPA safeguards public health and the environment. Dr. Burke brings a wealth of experience there.

Currently, he is Professor and Associate Dean of the John Hopkins Bloomberg School of Public Health in Baltimore, Maryland. With over 35 years of experience in State and Federal leadership, including as an official at the State of New Jersey's Department of Health, Dr. Burke has also chaired several studies by the National Academy of Sciences and has served on multiple EPA science advisory councils and brings a wealth of experience.

We will also consider the nomination of Ms. Victoria Baecher Wassmer to be Chief Financial Officer of the Environmental Protection Agency. Ms. Wassmer has 17 years of experience working on budgeting, analysis and management issues.

She began her service at the OMB, has worked in the private sector and local government. Currently, she serves as the Assistant Administrator of the FAA's Office of Finance.

If confirmed, Ms. Wassmer would help formulate and manage EPA's annual budget and performance plan and provide oversight for the agency's financial operations.

We know there are a number of reforms going into place right now as a result of the scandal involving John Beale, an EPA employee who, as best I can describe, was like the movie, Catch Me If You Can, a kind of rogue. I do not even know how to describe him. He was a phony, falsely claimed he was a CIA agent, he stole money and now the Department of Justice is getting that money back. He has begun, I believe, serving a term or is being sentenced. He is being sentenced tomorrow. His fraudulent activities span multiple Administrations. He did plead guilty in Federal court to theft of Federal property.

This position is absolutely critical because now we have to make sure something like this never happens again from these rogue actors, not only at EPA but anywhere in Government. This Committee is going to continue to conduct oversight in this matter as the EPA Inspector General completes his investigation.

I want to note that I spoke to Administrator McCarthy about this again. She said she worked hard to shine light on this issue and the Obama administration Department of Justice is working to make sure taxpayers are reimbursed. I look forward to working with the new CFO on all of these issues.

This hearing is important. I thank colleagues for attending and showing interest in these important positions.

With that, I will call on Ranking Member Vitter.

OPENING STATEMENT OF HON. DAVID VITTER, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator VITTER. Thank you very much, Chairman Boxer for convening today's hearing. I also want to thank all of our nominees for being here today.

I would be remiss if I didn't express my concern over the scope of this hearing that covers four Presidential nominees from three distinct agencies. I really believe, as do my colleagues on this side, that scope should warrant a more thorough Committee review than this pretty rush one at the end of the year.

Unfortunately, I think it is the nature of our current Senate that we have had a limited opportunity to do enough oversight. Because that is the case, I want to take this opportunity in my opening statement to outline some significant concerns about the failure of the Committee on oversight.

The EPA, as the Chairman mentioned, is wrought with mismanagement and lack of appropriate responsibility to account for taxpayer dollars. That is certainly over multiple Administrations, not just this one. The most recent and blatant example of this ineptitude is the case she mentioned of CIA agent John Beale. Beale's scam was made possible by a widespread incompetence within the agency, in my opinion, and the Committee has also failed to hold a budget hearing on the EPA.

The two are directly related, and I think it is a big, big omission that this Committee does not do what is traditional and hold an EPA budget hearing toward the beginning of the Congress.

In addition to these concerns, the agency is in perpetual overdrive executing the President's extreme climate agenda by administrative fiat. In reality, that has the ultimate impact of increasing energy prices being a regressive tax on consumers and making America less competitive internationally.

This side of the Committee has repeatedly asked for a climate change oversight hearing regarding this with the EPA and other Administration officials. While that is set to be scheduled in the new year, we repeat our call that include key witnesses from the Government—EPA, Interior, Commerce and so forth. It has to include those key Government witnesses.

I would also direct significant concerns to the Department of the Interior where Ms. Suh has served in a leadership role for 4 and a half years. The Department, which is charged with managing our lands for multiple uses, has focused instead on an anti-fossil fuel agenda. The Administration's policies use questionable scientific and economic analysis to cut off water to farmers, to restrict Native Americans from producing their own resources, to eliminate access to any type of resource production that the Left does not think is appropriate, and so forth.

Also, the Interior Department has gone to new levels to expand upon the practice of negotiating closed door settlement agreements with radical environmental organizations that exclude from the discussion the folks directly impacted. Again, the Committee remains silent, and we do not have adequate oversight, in my opinion.

This current state of affairs is not just offensive to those on my side of the aisle. Let me quote Jonathan Turley, a supporter of President Obama, a Shapiro professor of public interest law at

George Washington University. He stated, "There is ample room given to a President in setting priorities in the enforcement of laws. Even with this ample allowance, however, I believe that President Barack Obama has crossed the constitutional line between discretionary enforcement and defiance of Federal law."

Professor Turley further stated, "President Obama is not simply posing a danger to the constitutional system, he becomes the very danger that the Constitution was designed to avoid."

That sort of overreach is exactly why our oversight role is so essential. It is exactly why our role with regard to executive nominations is so important as part of that oversight role. My side of the aisle brings those very strong and legitimate concerns and wants to do more aggressive and appropriate oversight through this Committee.

Thank you, Madam Chair.

Senator BOXER. Thank you, so much.

We are going to be putting together the number of hearings we have had on all of the issues you talked about just to give you a sense of how it was when Senator Inhofe was Chairman just to compare how many witnesses came before us, how many nominees of Bush you took at one time because I was here and I don't think that hearing from four different nominees is in any way unusual, not only for this Committee, but for any committee.

I also want to say I saw Jonathan Turley and my understanding is he was attacking Obama from the Left and it had to do with the NSA, but I am going to go get those because I do not think it had anything to do with anything else.

Senator VITTER. Madam Chair, I would welcome that discussion. As part of that discussion, I would like to look at the routine practice of having budget hearings. I think that is essential oversight for the EPA and for any agency, as well as these other areas of oversight.

Senator BOXER. Sure.

Senator VITTER. I am particularly concerned about getting the agencies involved in the climate agenda, getting them to testify directly about their administrative actions.

Senator BOXER. Sure. The good news is you have already signed up on a hearing on climate for January 16 and you will get to pick a lot of the witnesses. Here is the other point, if I could just finish because I think it is important. You used your time to criticize how I am running this committee so I am going to take the time it takes to respond.

You have quoted people having viewed the Constitution—I do not believe it had anything to do with EPA, but I am going to go back and look at it because I watched him saying those things, criticizing Obama from the Left. It is interesting that you would join in on that, but that is OK.

Here is the thing. We have the climate hearing. The budget hearing was canceled because you and your friends over here, your dear colleagues, held up Gina McCarthy and asked her a thousand questions and held up her confirmation for months. She was not part of four people, it was her. We did have a hearing on the budget. It had to be canceled.

Of course we are going to take another look at that but in my opinion, and it is a disagreement here, I sense in your tone and tenor, and you have every right and I defend your right to take whatever position you and your colleagues take, it seems to me by being critical of the fact that we are having a hearing today, calling it a rushed hearing, I do not view it as a rushed hearing.

The people we are hearing from today are super-qualified. One of them worked for a Republican United States Senator. To make it sound like we are rushing and jamming through is just wrong.

We will continue to respectfully disagree. I feel that we have done a tremendous amount of oversight. We are having I don't know how many hearings on the NRC oversight and have more coming up in February. For your sake and my sake, I am going to make a list of all the hearings we have had over time and compare it to the oversight hearings Senator Inhofe, who I thought was a great chairman, had. We will take a look at it.

Senator VITTER. Madam Chairman, may I respond?

Senator BOXER. Yes, you may.

Senator VITTER. Thank you. I will be succinct.

My comments were about our general oversight responsibility. We will just have to agree to disagree. I do not think we have been nearly aggressive enough in fulfilling that responsibility. Just to underscore so we can move forward productively, my two top priorities would be a budget hearing, which I think is essential. I do not understand how the Gina McCarthy thing had to lead to canceling that.

Senator BOXER. Other than that she was the head of the EPA.

Senator VITTER. If could just finish?

Senator BOXER. You said you didn't know how it happened. It is like talking about an agency without the head of the agency there.

Senator VITTER. Well, she is there now and we have asked for a budget hearing to be scheduled.

Senator BOXER. We will have it.

Senator VITTER. OK, great. We have been asking for that, it was scheduled and it was canceled.

My second top priority is to be able to call in the top leaders of Federal agencies directly involved in pushing this extreme climate agenda by administrative fiat. That has not been agreed to in terms of getting those heads of the agencies as part of that climate discussion.

Senator BOXER. I will call in every agency over which we have jurisdiction. I have the gavel. You may get it, and then you can call in whoever you want. I am not going to call in people who I do not have any oversight over. I think that is an abuse of power. Just know I am really not going to do that.

Anyone that we have oversight over will be here. You can question them. Gina McCarthy will be here, I am really looking forward to it, on January 16. Believe me, we will go all day and you can talk about budget, clean air, dirty air, clean water, anything you want.

With that, we are going to turn to Senator Cardin.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Thank you, Madam Chair.

I assume that the four nominees still want to come forward.

First, I want to thank the Chair for the continuation of the tradition of this Committee, the bipartisan tradition of this Committee as it relates to nominations and that is to bring together well qualified professionals whose qualifications are not under challenge at all—hopefully these are non-controversial confirmations—to bring that together, to package so that our Committee can take action.

Quite frankly, I haven't heard from a single constituent who believes that the U.S. Senate is moving too quickly on anything. I am happy that we have these confirmation hearings today.

I would make one further comment. I don't want to get involved in the oversight issue but it is certainly a lot easier to hold an agency accountable if you have the confirmed positions in place. In too many cases, we have seen very qualified people held up from being confirmed not because of their qualifications, but by concerns members had in regard to the agency for which they are being nominated.

It is very difficult to say we are going to hold you accountable but we won't give you the confirmed positions in order to do the work you need to do.

Madam Chair, I would ask that my full statement be included in the record.

I had a chance to meet with Ms. Suh. I appreciate her willingness to come forward for a very important position with Fish, Wildlife and Parks and the National Park Service. I had a chance to discuss with her several priorities we had in regard to converting the Tubman National Monument into a national park.

I know that you are truly a child of the west, and you have done great things in the western part of our State. We know that you will bring that enthusiasm to the east coast of the United States, particularly as it relates to our national treasure, the Chesapeake Bay. We also know that you will work with us as we go over why we cannot get damages from those who abuse our wildlife refuges and to look at ways we can deal with invasive species.

These are all areas I mention because I had the honor in this Congress to chair the Water and Wildlife Subcommittee of the Environment and Public Works Committee, areas in which we will be working together hopefully to advance the agenda during this Congress.

To Dr. Thomas Burke, thank you. You are a Marylander. That gives you a special view in my eyes anyway and I thank you for your dedicated leadership. As Chairman Boxer said, we look to you and the agency for which you are seeking confirmation to give us the best science because our decisions should be based on science. Having a confirmed head will help us be able to get that type of guidance for our Committee decisions and deliberations.

I remember your testimony before this Committee, Madam Chair, when you had the hearing on the quality of our drinking water and contamination with chromium–6. Dr. Burke, I think, added greatly to the quality of that hearing and to our responsibility. We thank you for being willing to step forward.

To the other two nominees, Mr. Roy Williams, let me first thank you. The Assistant Secretary of Commerce for Economic Development is a very important position. In my own State of Maryland, the EDA program is critically important to our rural areas. In western Maryland, we have the Tri-County Council for Western Maryland, and on the shore, we have the Upper Shore Regional Council and the Tri-County Council for the Lower Eastern Shore that have done incredibly strong economic opportunities as a result of EDA's participation. We will certainly working with you in that regard.

To Ms. Wassmer, we already discussed that the Chief Financial Officer is critically important to make sure that we have the right policies in place in order to make sure we are getting the best value for the money being spent by the public.

Last, Madam Chair, I want to take this opportunity not only to thank the four nominees for being willing to serve the public, but this is a very challenging time to serve in the public sector. Your willingness to step forward in public service is very, very much appreciated.

We know you cannot do it alone. We know your family makes equal sacrifice. We know that from the sacrifices our families make. I particularly want to thank the family members for being willing to share their person with the community in this leadership position.

[The prepared statement of Senator Cardin follows:]

STATEMENT OF HON. BENJAMIN L. CARDIN,
U.S. SENATOR FROM THE STATE OF MARYLAND

Chairman Boxer, thank you for holding this hearing, and I want to welcome each of the nominees to the Committee. I look forward to hearing your testimony and answers to our questions. All four of today's nominees have impressive backgrounds and a demonstrated dedication to public service. I offer you best wishes with the proceedings of your confirmations.

The U.S. Fish and Wildlife Service and the National Park Service serve as important custodians of our Nation's natural resources. As a "child of the West," Rhea Suh has a lifelong understanding of the importance of robust conservation efforts to ensure current scenery and economic opportunities remain strong, and to provide these resources with protections for their use by future generations.

While there is certainly no fault in being from the West, Ms. Suh and I discussed in our meeting last week my interest in having the Fish and Wildlife Service and the National Park Service pay due attention to the needs here in the East, particularly in the Chesapeake Bay region. There is great opportunity and State and local support for Federal help in protecting one of the mid-Atlantic's most precious and valuable natural resources.

I look forward to working with you in executing the many initiatives we have in the region. From building on the establishment of the Harriet Tubman National Monument to making the Tubman National Historical Park, to providing the Fish and Wildlife Service greater authority to collect damages when refuges are harmed by irresponsible actors, to bringing more Land and Water Conservation Fund dollars into the region to protect the Bay as is intended by the President's May 2009 Chesapeake Bay Executive Order. There is a lot of work to do.

Having worked for both Republicans and Democrats, including Senator Ben Nighthorse-Campbell, she understands the importance of working across party lines to accomplish great things.

I also look forward to working with you to develop a Federal strategy for invasive species control. Until recently, the wetlands at the Blackwater National Wildlife Refuge in my home State, and wetlands in the home State of the Ranking Member, were threatened by nutria. This invasive rodent species attacks the roots of wetland plants, undermining conservation efforts of the U.S. Fish and Wildlife Service and harming the overall health of the Chesapeake Bay. Increased coordination efforts

between Federal, State, and local partners can better protect critical investments in place on Federal and private lands across our Nation from invasive species.

But there is a growing threat nationwide from a wide range of invasive species. Pythons in the Everglades. Stinkbugs in the Mid-Atlantic. Asian Carp in the Great Lakes.

These non-native and dangerous species present real public health, safety, economic and ecological threats to the places they are found. I want to work with USFWS to develop a comprehensive approach to combating these problems nationwide.

Dr. Thomas Burke, in addition to being a Maryland resident, has an extensive background in protecting the public health and advancing environmental protection efforts and is exceptionally well qualified to lead the EPA Office of Research and Development.

His 35 years as a State scientist, public health official, research investigator, member of the Science Advisory Board, member of the Board of Scientific Counselors, and Associate Dean for Public Health Practice and Training at Johns Hopkins Bloomberg School of Public Health have provided him with an understanding of the importance of having credible science to base environmental health decisions.

His work with the late Senator Lautenberg on chemical safety reform will serve this Committee well as we undertake Toxic Substances Control Act Reform. I also found his testimony before this Committee in 2011 on the risks of Chromium–6 contamination in drinking water to be incredibly helpful as Congress continues to look for opportunities to improve the safety of our Nation's drinking water.

Sound science should be the primary factor on which the EPA bases their decisionmaking to protect the environment and public health. As the chair of a National Academy of Sciences committee, Dr. Burke has worked to peer review EPA risk analysis reports and offered recommendations to improve future risk assessments. Dr. Burke has the credentials, respect, and bipartisan approach needed to ensure the EPA reaches the best scientific answers to base their decisionmaking on.

Dr. Burke's confirmation is urgently needed; this post has been without a confirmed Assistant Administrator for nearly 2 years. This gap in leadership caused attacks on EPA's scientific review processes to result in unnecessary delays in decisionmaking. A confirmed Assistant Administrator is needed to get EPA's work back on track and to allow science to determine what is needed to protect public health.

Chairman Boxer, the EPA needs a Senate-confirmed Assistant Administrator for the EPA Office of Research and Development. Dr. Burke has proven to be that person.

Last, I want to talk briefly about the emerging economies of Western Maryland and the Eastern Shore of Maryland. These historically underserved communities in these beautiful rural reaches of Maryland have benefited from the planning support and investments from the Economic Development Administration. From Global Climate Change Mitigation Incentive Fund grants to Economic Development District Planning support, these parts of Maryland have seen the important link between a strategic Federal investment and the ability for the local community to successfully leverage Federal funding. Mr. Williams, as you go through your confirmation process I would encourage you to engage with the Tri-County Council of Western Maryland, the Upper Shore Regional Council, and Tri-County Council for the Lower Eastern Shore.

Should you be confirmed, I look forward to working with you in these parts of my State to increase the availability of broadband Internet access, improve transportation and provide greater regional economic planning support to foster economic growth in these underserved communities.

I appreciate the opportunity to hear from the nominees today. Thank you.

Senator BOXER. Thank you very much, Senator.

I would turn to my friend, Jim Inhofe.

OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. Thank you, Madam Chairman.

First of all, let me thank Ms. Rhea Suh for coming by the office. We spent a long time together and I do appreciate that, and of course Roy Williams. I would have to tell them what I told you when you walked in the door. I tell my fellow Senators all the time, if you want a hard job, you become the mayor of a major city. You

have done that, and that is why to me when you walked in, you were immediately qualified for this job, for that reason.

There is no hiding place if you are mayor. If they don't like the trash system, it ends up in your front yard, and it did in mine.

I am going to touch on something a bit different than Senator Vitter on the effect that the nuclear option might have on this Committee because this Committee has operated very, very well. When you were talking about the number of nominees, I remember one time when I was chairman, we had seven nominees in one hearing.

This is the first nomination hearing we have had since the nuclear option nominees. If I can take a couple minutes, I would like to discuss how this might affect what we are doing here.

Just last Saturday, the Washington Post confirmed my claim that the White House systematically delayed in enacting a series of rules on the environment. I am quoting what they said and this is exactly what I had said in this Committee. "The White House systematically delayed in enacting a series of rules on the environment, worker safety and health care to prevent them from becoming points of contention before the 2012 election."

I remember talking about that very thing. That is what that report I put together just 2 weeks before the election was about.

As Ranking Member, I issued that report warning that President Obama and his team of nominees would intentionally manipulate the rulemaking process to avoid the political consequences preventing the revelation of these true economic pains, all that happening right before the election. Nominations have long been one of the primary means by which this Committee, especially those in the minority, can provide a check on this rulemaking bureaucracy.

However, our oversight leverage in this Committee has now been diminished, thus allowing this flexible decisionmaking process of the Administration to continue to operate in secret without any congressional oversight. Democrats are fully aware of this.

Back in the days when I was chairman and Senator Carper was a minority he actually did something that showed how beneficial this is. He used the nomination of Governor Mike Levitt to head the EPA to extract data on the 4(p) bill that he was working on with Senator Jeffords.

In fact, the entire Democratic side of the committee boycotted Governor Levitt's confirmation hearing because they were not satisfied with his answers to their 75 pre-hearing questions, keeping in mind that he didn't have any prior experience as an administrator so it was very difficult to do that.

Nevertheless, the Democrats stonewalled the process, and it worked. Senator Carper eventually got the information he requested. I agree with that. I think he should have taken the action that he did and it worked. Minority rights were protected.

I think it is important to remember because President Obama actually mentioned Gina McCarthy's confirmation process in his remarks supporting the Democrats' move to end the 60-vote threshold on nominations.

Our rationale behind delaying McCarthy's consideration was a lack of responsiveness toward our request for information, the most

important of which was the data underlying the studies the EPA used to justify the costly regulations.

Another example is around the time I was first elected to the Senate in 1994, President Clinton tried to move Bob Perciasepe from the head of Water to the head of Air without going through the regular confirmation process. In protest, I put a blanket hold on all Presidential nominees. In turn, President Clinton formally submitted the change to the Senate. We then held a hearing and confirmed Perciasepe to the Air Office and moved along.

In this case, our hold was used to protect the integrity of the Senate's constitutional role to provide advice and consent to the Presidential nominations. Now that the rules have been changed, exercising this kind of authority will be nearly impossible. This should be a real concern.

When I chaired the Committee, I remembered working with Dale Hall who served as President Bush's Director of Fish and Wildlife. Prior to his nomination being made official, the Fish and Wildlife Service provided reams of data that detailed the work they were doing around the country. Much of the data was of particular concern to members of the Committee and it gave us a captive audience with the service that we might not otherwise have had. Because this Committee is actively engaged and vested in the nomination process, we had a much more cooperative relationship.

I guess I am saying a lot of that is lost now. I think we should sit back and look at how that act would affect minority rights in this Committee. I think very likely something could change in a short period of time, and the majority today could become the minority, so they should be as concerned about that as I am today.

Thank you, Madam Chairman.

[The referenced article follows:]

The Washington Post

ICYMI: White House delayed enacting rules ahead of 2012 election to avoid controversy

By Juliet Eilperin, Published: December 14

The White House systematically delayed enacting a series of rules on the environment, worker safety and health care to prevent them from becoming points of contention before the 2012 election, according to documents and interviews with current and former administration officials.

Some agency officials were instructed to hold off submitting proposals to the White House for up to a year to ensure that they would not be issued before voters went to the polls, the current and former officials said.

The delays meant that rules were postponed or never issued. The stalled regulations included crucial elements of the Affordable Care Act, what bodies of water deserved federal protection, pollution controls for industrial boilers and limits on dangerous silica exposure in the workplace.

The Obama administration has repeatedly said that any delays until after the election were coincidental and that such decisions were made without regard to politics. But seven current and former administration officials told The Washington Post that the motives behind many of the delays were clearly political, as Obama's top aides focused on avoiding controversy before his reelection.

The number and scope of delays under Obama went well beyond those of his predecessors, who helped shape rules but did not have the same formalized controls, said current and former officials who spoke on the condition of anonymity because of the sensitivity of the topic.

Those findings are bolstered by a new report from the Administrative Conference of the United States (ACUS), an independent agency that advises the federal government on regulatory issues. The report is based on anonymous interviews with more than a dozen senior agency officials who worked with the Office of Information and Regulatory Affairs (OIRA), which oversees the implementation of federal rules.

The report said internal reviews of proposed regulatory changes "took longer in 2011 and 2012 because of concerns about the agencies issuing costly or controversial rules prior to the November 2012 election."

Emily Cain, spokeswoman for the Office of Management and Budget, said in a statement that the administration's "approach to regulatory review is consistent with long-standing precedent across previous administrations and fully adheres" to federal rules.

Administration officials noted that they issued a number of controversial rules during Obama's first term, including limits on mercury emissions for power plants and Medicaid eligibility criteria under the Affordable Care Act.

"OMB works as expeditiously as possible to review rules, but when it comes to complex rules with significant potential impact, we take the time needed to get them right," Cain said.

But Ronald White, who directs regulatory policy at the advocacy group Center for Effective Government, said the "overt manipulation of the regulatory review process by a small White House office" raises questions about how the government writes regulations. He said the amount of time it took the White House to review proposed rules was "particularly egregious over the past two years."

Previous White House operations have weighed in on major rules before they were officially submitted for review. But Jeffrey Holmstead, who headed the EPA's Office of Air and Radiation in the George W. Bush administration, said the effort was not as extensive as the Obama administration's approach.

"There was no formalized process by which you had to get permission to send them over," Holmstead said, referring to rules being submitted to the White House.

The recent decision to bring on Democratic strategist John Podesta as a senior White House adviser is likely to accelerate the number of new rules and executive orders, given Podesta's long-standing support for using executive action to achieve the president's goals despite congressional opposition.

Sen. Richard Blumenthal (D-Conn.), who chairs the Judiciary Subcommittee on Oversight, Federal Rights and Agency Action, said he's concerned about the real-world impact of the postponements in the first term.

"Legal protection delayed is protection denied," Blumenthal said. "I've spoken to officials at the top rungs of the White House power structure and at OIRA and we're going to hold their feet to the fire, and we're going to make sure they're held accountable in a series of hearings."

The officials interviewed for the ACUS report, whose names were withheld from publication by the study authors, said that starting in 2012 they had to meet with an OIRA desk officer before submitting each significant rule for formal review. They called the sessions "Mother-may-I" meetings, according to the study.

The accounts were echoed by four Obama administration political appointees and three career officials interviewed by The Post.

At the Environmental Protection Agency, for example, a former official said that only two managers had the authority to request a major rule in 2012: then-administrator Lisa P. Jackson and deputy administrator Bob Perciasepe. Perciasepe and OIRA's director at the time, Cass Sunstein, would have "weekly and sometimes semi-weekly discussions" to discuss rules that affected the economy, one said, because they had political consequences, the person said.

"As we entered the run-up to the election, the word went out the White House was not anxious to review new rules," the former official said.

Sunstein, who has returned to his post as a Harvard Law School professor, declined to comment.

Several significant EPA proposals were withheld as a result of those meetings, officials said, including a proposal requiring cleaner gasoline and lower-pollution vehicles that had won the support of automakers but angered the oil industry.

That regulation, which would reduce the amount of sulfur in U.S. gasoline by two-thirds and impose fleetwide pollution limits on new vehicles by 2017, was ready in December 2011, said three officials familiar with the proposal. But agency officials were told to wait a year to submit it for review because critics could use it to suggest that the administration was raising gas prices, they said. The EPA issued the proposed rule in March.

Other EPA regulations that were delayed beyond the 2012 election included rules on coal ash disposal, water pollution rules for streams and wetlands, air emissions from industrial boilers and cement kilns, and carbon dioxide limits for existing power plants.

Ross Eisenberg, who serves as vice president of energy and resources policy at the National Association for Manufacturers and has criticized several EPA regulations, noted that in the past year the administration moved ahead with proposals such as the rules on greenhouse gas emissions and boilers.

"The agenda certainly did slow down, but it doesn't change," he said.

The administration also was slow to handle rules pertaining to its health-care law. Several key regulations did not come out until after the 2012 election, including one defining what constitutes "essential health benefits" under a health plan and which Americans could qualify for federal subsidies if they opted to enroll in a state or a federal marketplace plan.

The latter focused on what constitutes "affordable." Treasury proposed a regulation in August 2011 saying an employer plan was affordable as long as the premium for an individual was no more than 9.5 percent of the taxpayer's household income. Several groups — including labor unions — argued that the proposal did not take into account that the premium for a family plan might be much higher than that standard.

Unions represent a vital part of the Democratic coalition, in part because they help mobilize voters during elections.

The Treasury Department held the proposal back while finalizing all the other tax-credit rules on May 23, 2012. Treasury officials later told those working on the regulation that it could not be published before the election, according to a government official familiar with the decision who spoke on the condition of anonymity because of its sensitive nature. The department made the rule on Feb. 1.

OMB has reduced the length of time that rules are pending this year. The agency has cut the number of rules that were under review for more than 200 days by more than half.

But while the administration is pressing ahead, activists say the delays took a toll. Peg Seminario, director of safety and health for the AFL-CIO, points to an update of the nation's silica standards proposed Sept. 12 after a long delay. The rule, which would prevent an estimated 688 deaths and 1,585 silica-related illnesses each year, won't be finalized until 2016.

Jon Devine, a senior lawyer in the Natural Resources Defense Council's water program, said small streams and wetlands remain vulnerable because of the administration's foot-dragging. The EPA recently withdrew a proposal to outline what kind of water bodies deserve federal protection that had been pending since February 2012 and announced it would issue a legally binding rule instead.

"What's disappointing is it leaves waters subject to the existing, weak state of affairs until they get the rule over the final hurdle," Devine said.

http://www.washingtonpost.com/politics/white-house-delayed-enacting-rules-ahead-of-2012-election-to-avoid-controversy/2013/12/14/7885a494-561a-11e3-ba82-16ed03681809_print.html

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA

This is the first nominations hearing we've had since the Democrats exercised the nuclear option on nominations, and I think we need to take a few minutes to talk about how these actions have eviscerated this Committee's ability to shine a light on rulemaking decisions that occur behind closed doors at EPA and the White House.

Just this last Saturday, the Washington Post confirmed my claim that "The White House systematically delayed enacting a series of rules on the environment, worker safety and health care to prevent them from becoming points of contention before the 2012 election."

As Ranking Member, I issued a report on October 18, 2012, warning that the President and his team of handpicked nominees will intentionally manipulate the rulemaking process to avoid the political consequences, preventing the revelation of the true economic pain.

Nominations have long been one of the primary means by which this Committee—especially those in the minority—can provide a check on this rulemaking bureaucracy.

However, our oversight leverage in this Committee has now been completely diminished, thus allowing this flexible decisionmaking process of the Administration to continue to operate in secret without any congressional oversight—and Democrats are fully aware of this. Senator Carper, my friend from Delaware, used the nomination of Governor Mike Leavitt to head the EPA to extract data on the 4P bill he was working on with Senator Jeffords.

In fact, the entire Democrat side of the Committee boycotted Governor Leavitt's confirmation hearing because they were not satisfied with his answers to their 75 pre-hearing questions, never mind the fact that he did not work at EPA prior to becoming Administrator, making his access to their questions' answers much more difficult.

Nevertheless, the Democrats stone-walled the process, and it worked. Senator Carper eventually got the information he requested.

I think this is important to remember because President Obama actually mentioned Gina McCarthy's confirmation process in his remarks supporting the Democrats' move to end a 60-vote threshold on nominations. Our rationale behind delaying McCarthy's consideration was a lack of responsiveness toward our requests for information, the most important of which was the data underlying the studies EPA uses to justify its costly regulations.

In another example, around the time I was first elected to the Senate in 1994, President Clinton tried to move Bob Perciasepe from head of the Office of Water to head the Office of Air without going through the requisite confirmation process.

In protest, I put a blanket hold on all presidential nominations. In turn, President Clinton formally submitted the change to the Senate. We then held the hearing, confirmed Perciasepe to the Air Office, and moved along.

In this case, our hold was used to protect the integrity of the Senate's constitutional role to provide advice and consent to the President's nominations. Now that the rules have been changed, exercising this kind of authority will be impossible.

This should be a real concern. When I was Chairman of this Committee, one person I remember working with was H. Dale Hall, who served as President Bush's Director of the Fish and Wildlife Service. Prior to his nomination being made official, the Fish and Wildlife Service provided us with reams of data that detailed the work they were doing around the country.

Much of this data was of particular concern to members of the Committee, and it gave us a captive audience with the Service that we might not otherwise have had. Because the Committee was actively engaged and invested in the nominations process, we had a much more cooperative relationship with the Administration and received a lot of the information we needed.

That is now all lost. Because the Democrats have taken away the super majority, our ability to exercise effective oversight—either in the majority or minority—is gone. This should be concerning to us all.

I appreciate the time I was able to spend with you, Mr. Williams, discussing the valuable work that EDA is responsible for in Oklahoma. I won't have any questions for you, but I look forward to working with you once you are confirmed.

I also would like to thank Ms. Suh for coming to my office. I appreciated our very frank discussion on the decisions you will be responsible for that could negatively impact domestic energy independence—something we will get to in the Q&As.

Senator BOXER. Thank you.

I think as someone who held out until the last minute on this, I can tell you right now there is a difference between holding up one person once in a while and holding up so many people. There is a difference. I, myself, have holds on people but eventually there should be a vote. That is all.

Senator Fischer.

OPENING STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator FISCHER. Thank you, Chairman Boxer and Ranking Member Vitter, for holding today's hearing to consider the nominations for these very important positions.

Mr. Williams and Ms. Suh, I would especially like to thank you for taking the time to come to my office and meeting. Thank you for the conversations we had at that time. I would also like to thank each of the nominees for being here today and also for your willingness to serve the public.

The Senate's role in providing advice and consent on Presidential nominees is a responsibility that I take very seriously. I appreciate that the nomination process provides the opportunity to not only assess the qualifications of nominees but also to engage in policy discussions and share with nominees the issues of importance in our home States and the concerns of our constituents.

Nebraska has many concerns, especially when it comes to activities of the National Park Service and the Fish and Wildlife Service. At a time when the National Park Service estimates that it has a maintenance backlog of approximately $13 billion, many Nebraskans were very, very surprised and upset when the National Park Service and the Fish and Wildlife Service issued a proposal earlier this year that calls for the potential Federal management or acquisition of more than 1.4 million acres in Nebraska and South Dakota.

Nebraska landowners are already excellent stewards of the natural resources entrusted to them. They are working hard to bring both environmental and economic benefits to the area, goals that can be achieved through private/public partnerships and conservation programs without increasing Federal jurisdiction over additional private land at taxpayer expense.

Nebraskans are also concerned about Fish and Wildlife Service policy with respect to endangered species. As the agency engages in a closed door settlement with environmental activist groups that will lead to delisting determinations for more than 250 species, many are nervous about the impacts these determinations will have on private property rights, energy development and economic growth. The public is entitled to a process that is more transparent than it has been thus far.

I am hopeful that the Fish and Wildlife Service will work with stakeholders to implement recommendations from the National Academy of Sciences to improve its endangered species consultation process for pesticide approvals. For too long, product approvals have been bottlenecked by a broken process that is impeding innovation and agriculture while doing nothing to protect listed species or critical habitat.

With respect to EPA, Nebraskans want an agency that operates in a transparent manner. Given recent reports of mismanagement and lack of internal controls at EPA that led to a senior employee stealing close to $1 million, the EPA needs a financial officer who is attentive and accountable.

As the agency moves forward with sweeping regulations, with significant economic cost under President Obama's climate agenda, it is critical that the EPA bases its rules on sound, publicly available science.

Regarding the Economic Development Administration, I am hopeful that the EDA will empower communities to develop strategies that foster job creation and attract private investment. Mr. Williams, you and I will have a lot to talk about with regard to some activities where we can both help the constituents I have in the Omaha area.

Obviously there are many important issues at stake to discuss with today's nominees. I look forward to the opportunity to do so.

Thank you.

Senator BOXER. Thank you.

Senator Boozman followed by Senator Barrasso.

OPENING STATEMENT OF HON. JOHN BOOZMAN, U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BOOZMAN. Thank you, Madam Chair and Ranking Member Vitter.

Each of these positions is incredibly important. Mr. Williams, I am eager to hear how you believe EDA can promote growth and most importantly in economically disadvantaged areas not only in Arkansas but throughout the country.

When we met I appreciated hearing of your knowledge and recognition of the role of the Delta Regional Authority. I look forward to your testimony and working with you going forward. I think Senator Inhofe made a good point as far as your background, and you will have the opportunity to do outstanding things.

Ms. Suh, I also appreciated meeting with you. I appreciate your willingness to serve. Not only in Arkansas but throughout the country we have numerous concerns with the Park Service and Fish and Wildlife. We will explore these concerns as the process continues. In short, many of our problems are rooted in the lack of transparency and the failure of the Department to engage with communities and citizens before taking action. I think that is very, very important and would eliminate a lot of our problems.

This has been a long term trend but it has grown worse over the last few years. Nonetheless, again, I appreciate your willingness to serve and very much look forward to engaging with you as the nomination process continues.

Ms. Wassmer and Mr. Burke, you also will have important responsibilities at the EPA. I look forward to your testimony and exploring a number of issues with you. Mr. Burke, I am interested in hearing your views on the EPA science advisory process and how that might be strengthened to ensure that it is objective, fair and transparent.

With that, I yield back my time.

Senator BOXER. Thank you.

We turn to our last speaker, Senator Barrasso.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. Thank you very much, Madam Chairman.

I want to thank and congratulate each of our nominees and welcome your families.

Madam Chairman, I would like to discuss my concerns specifically regarding one of the nominees before us today. That is the nomination of Rhea Sun Suh to be Assistant Secretary for Fish, Wildlife and Parks at the Department of the Interior.

The nominee stated in a Hewlett Foundation report national gas development was "easily the single greatest threat to ecological integrity of the west." National gas development easily, she said, was the single greatest threat to the ecological integrity of the west.

As I stated last week before the Senate Energy and Natural Resources Committee, I find this viewpoint way out of the mainstream and I am sure other members of this Committee do as well. Expanding responsible natural gas development is one of the biggest economic success stories in this country and has created thousands of jobs.

If confirmed, there are pending issues this nominee will be in charge of and influence she will have that will allow her to block natural gas production in places like Wyoming, Alaska, New Mexico, West Virginia, Louisiana and others.

There will be numerous decisions that will be made during her tenure as to whether to list and designate critical habitat for sage grouse in eight western States, not to mention potential listings of the lesser prairie chicken in Oklahoma, the Gunnison Sage Grouse in Colorado and Utah just to name a few.

She will also have influence over future species, sue and settle agreements and the ability to issue new rules. These are things which can restrict or lock up more land and ocean from natural gas production both offshore and onshore.

In addition, the National Park Service, which she will oversee, has also begun commenting on BLM's hydraulic fracturing rule. When raising this statement with the nominee, she stated she supports an all of the above approach to energy. We can easily support an all of the above approach when the activist groups that have been funded through her activities her entire career see the above choices as only wind and solar.

I support an all of the above energy approach because I support renewables as well as oil, coal, natural gas, hydro and others. The groups that are funded by the Hewlett Foundation where the nominee was previously employed for years started campaigns, one called Beyond Coal, another called Beyond Natural Gas.

If you truly support natural gas development, you would never say it is the greatest threat to the west. In fact, the impact on the west from natural gas development is quite the opposite.

I am not the only one who found the nominee's responses lacking. Washington Examiner columnist Ron Arnold referred to her response in his December 15 column as "transparent impenetrability."

Even after the nominee joined the Department, she stated before the Environmental Grantmakers 25th anniversary that "I look forward to working with you, my colleagues, mentors and friends to utilize the skills and talents of the EGA community to advance a more resilient world and a resilient movement."

Given the threshold for nominations has been lowered, it is incumbent upon this Committee to make sure that we do not confirm nominees who want to promote a movement or who consider the Grantmakers their colleagues in arms. We need a nominee who promotes the agenda of the public at large.

Natural gas is an important field for our country. Every Senator who supports natural gas and has communities that rely on natural gas production should be concerned.

Thank you, Madam Chairman. I look forward to the questions.

Senator BOXER. Thank you, Senator.

Now we would ask you all to come forward and we will get started. I would ask you to keep your comments to 5 minutes.

Senator Barrasso, I am going to enter into the record the various organizations funded by William and Flora Hewlett Foundation. You will be interested that one of them is the Christian Coalition so they do a number of things.

[The referenced information was not received at time of print.]

Senator BOXER. I think we will have each of you speak for 5 minutes. We might as well start with you, and I call you Mayor because once a mayor always a mayor and since that is helping you, I will call you Mayor Williams. Please go forward.

STATEMENT OF ROY K.J. WILLIAMS, NOMINATED TO BE ASSISTANT SECRETARY OF COMMERCE FOR ECONOMIC DEVELOPMENT, U.S. DEPARTMENT OF COMMERCE

Mr. WILLIAMS. Chairman Boxer, Ranking Member Vitter, distinguished members of the Committee, I am honored to come before you today as President Obama's nominee for Assistant Secretary of Commerce for Economic Development.

I want to express my appreciation for the time that you and your staff afforded me to meet with you during the past few weeks. It was valuable to gain insight into our mutual goals of promoting economic vibrancy in your respective States and across the country.

To Senators Brown and Portman, thank you for your introduction and thank you for your great service to the State of Ohio. I greatly appreciate the support the Senators showed me during my time as Mayor of the city of Youngstown. We are better off as a result of their efforts to put pragmatism over partisanship when it came to the interest of their constituents and this country.

I would also be remiss not to acknowledge my family who has joined me here today—my mother who is the source of anything I have been able to accomplish; my wife whose love and support is beyond what I deserve; and our son, Ethan, who I believe had to momentarily step out, as a 3-year old who has made being a parent one of the single greatest joys of my life.

I come here today with a perspective of economic development that has been shaped by almost 20 years of experience working both in the public and private sectors. I was born, reared and forged in a community that was once the poster child of economic

decline and devastation, a community that was ravaged by the collapse of manufacturing and the lack of economic diversity.

I am proud to tell you that this very same community is experiencing a renaissance, a renewal beyond what many thought would be possible through a combination of visioning, planning, public/private partnerships and investments, and, most importantly, a determined citizenry. Youngstown, Ohio, is redefining itself.

Over the course of the past 5 years, there has been well over $1 billion of private investment in the city of Youngstown resulting in the creation of hundreds of high quality jobs. One crowning example mentioned by the Senator was Vallourec Star, an international corporation which decided to expand in Youngstown. Vallourec Star manufactures seamless tubes and pipes used in oil and gas exploration which is, by the way, contributing to the President's agenda of all of the above in terms of reducing our Nation's dependence on foreign sources of oil.

The city of Youngstown was named as a top 10 destination to start a business by Entrepreneur Magazine. The Youngstown region is ranked in the top 10 amongst its peers nationally by Site Selection Magazine for the most new and expanded corporate facilities. The city laid claim to the first National Manufacturing Institute.

Youngstown State University is ranked highly by Forbes and Washington Monthly's College Guide among others. Youngstown is home to one of the best startup incubators in the world and is helping to lead the national export role.

Without question, the city of Youngstown still faces problems and challenges like many communities across this Nation. However, the city is no longer being defined solely by its problems as it had been for so many decades. It is also helping to establish a blueprint for other similarly situated communities across the country.

The Economic Development Administration plays a critical role in facilitating the economic transformation of distressed communities. I have always held that jobs are not created by politicians or government agencies. However, EDA and other government agencies do play an important role in helping to shape the economic environment. It is within this environment that private capital is put at risk by entrepreneurs, whether manufacturing, technology or providing goods and services. That ultimately creates jobs.

The public sector also plays a crucial role in investing in infrastructure, promoting innovation and encouraging regional cooperation, which likewise boosts private sector job creation. During the last few years, I have had the privilege to engage communities across this country from Alameda County, California, to Shreveport, Louisiana, from Flint, Michigan, to Gary, Indiana, and Quad Cities, Iowa, just to name a few. Without fail, those regions that are undergoing positive economic transformation have successfully leveraged public/private partnerships. This approach is at the core of the mission of the Economic Development Administration.

Over the last 5 years, we have worked to clear away the rubble of the greatest economic recession this country has seen since the Great Depression. While significant progress has been made, there

is still a lot of work to be done. I cannot think of a better place to continue that important work than from EDA.

In an environment of scarce resources, it becomes ever more important that our investments be made strategically and catalytically. We must help create an environment in which the principles of free and fair market capitalism reward those entrepreneurs who take risks, respect those workers who make the goods and services, and increases the quality of life in the communities that we call home.

The mission of the Economic Development Administration, which is to lead the Federal economic development agenda, promote innovation and prepare American communities for growth and success in this global economy is one that demands nothing short of excellence, accountability and measurable outcomes in its execution.

If I am fortunate enough to garner the support of this Committee, and if confirmed by the full Senate, I will work with you and your colleagues and the committed professionals at EDA to maintain the confidence of the people that we serve.

Chairman Boxer, thank you for this opportunity to address the Committee. I look forward to your questions.

[The prepared statement of Mr. Williams follows:]

ROY "JAY" WILLIAMS

ASSISTANT SECRETARY-DESIGNATE FOR ECONOMIC DEVELOPMENT AND ECONOMIC DEVELOPMENT ADMINISTRATION ADMINISTRATOR, DEPARTMENT OF COMMERCE

OPENING STATEMENT TO THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Chairman Boxer, Ranking Member Vitter, distinguished members of the committee; I am honored to come before you today as President Obama's nominee for Assistant Secretary of Commerce for Economic Development. I want to express my appreciation for the time that you and your staff afforded me to meet with you during the past few weeks. It was valuable to gain insight into our mutual goals of promoting economic vibrancy in your respective states and across the country.

To Senators Brown and Portman, thank for your service to the great State of Ohio. I appreciated your support during my time as Mayor of the City of Youngstown. We are better off a result of your efforts to put pragmatism over partisanship when it comes to the interests of your constituents and this county.

I would be remiss not to acknowledge my family who has joined me here today; my mother, who is the source of anything I've been able to accomplish, my wife who's love and support is beyond what I deserve, and our son Ethan who has made being a parent, the single greatest joy of my life.

I come here today with a perspective of economic development that has been shaped by almost twenty years of experience working both in the public and private sector. I was born, reared, and forged in a community that was once the poster child of economic decline and devastation; a community that was ravaged by the collapse of manufacturing and lack of economic diversity.

Yet, I am proud to tell you, that this very same community is experiencing a renaissance, a renewal beyond what most would have thought possible. Through a combination of visioning, planning, public/private partnerships and investments, and most importantly a determined citizenry, Youngstown, OH, is redefining itself.

Over the course of the past five years there has been well over $1 billion in private investment in the City of Youngstown, resulting the creation several hundred high quality jobs. One crowning example of this renaissance is Vallourec Star, an international corporation which decided to expand in Youngstown. Vallourec Star manufactures seamless steel tubes and pipes used in oil and gas exploration, which by the way is also contributing to the President's "all of the above" strategy to decrease our nation's dependence on foreign sources of oil.

The City of Youngstown was named a top ten destination to start a business by Entrepreneur Magazine. Site Selection Magazine ranked the Youngstown-Warren region in the top ten nationally, for the most new and expanded corporate facilities, with populations between 200,000 and 1 million. The City laid claim to the first National Manufacturing Institute. Youngstown State University is ranked highly by

Forbes and Washington Monthly's College Guide, among others. Youngstown is home to one of the best start-up incubators in the world, and is leading the nation in export growth.

Without question, the City of Youngstown still faces problems and challenges, like many communities across this nation. However, Youngstown is no longer being defined solely by those problems as it had been for so many decades. Youngstown is also helping to establish a blueprint for other similarly situated communities, fighting to build sustainable economies, rife with economic opportunity.

The Economic Development Administration has a vital role in facilitating the economic transformation of these communities. Jobs aren't created by politicians or government agencies. However, EDA and others agencies, do play an important role in helping to shape the economic environment.

It is within this environment, that private capital is put at risk by entrepreneurs whether in manufacturing, technology, or providing goods and services, that ultimately creates jobs. The public sector also plays a crucial role in investing in infrastructure, promoting innovation, and encouraging regional cooperation, which likewise boosts private sector job creation.

I've had the privilege to engage communities across this county from Alameda County, CA to Shreveport, LA. From Flint MI to Gary, IN and Quad Cities, IA just to name a few. I have witnessed both the economic struggles and successes in these communities. Without fail, those regions that are undergoing positive economic transformation have successfully leveraged public/private partnerships. This approach is at the core of the mission of the Economic Development Administration.

Over the last five years, we've worked to clear away the rubble of the greatest economic recession this country has seen since the great depression. While significant progress has been made, there is still a lot of work to be done. I can't think of a better place to continue that important work than from EDA.

In an environment of scarce resources, it becomes ever more important that our investments be strategic and catalytic. We must help create an environment in which the principles of free and fair market capitalism reward those entrepreneurs who take risks, respect those workers who provide the goods and services, and increases the quality of life in the communities we call home.

The mission of the Economic Development Administration – leading the federal economic development agenda, promoting innovation, and preparing American communities for growth and success in our global economy – is one that demands nothing short of excellence, accountability, and measurable outcomes in its execution.

If I am fortunate enough to garner the support of this committee and if confirmed by the full Senate, I will work with you and your colleagues, and the committed professionals at EDA to maintain the confidence of the people that we serve.

Chairman Boxer, thank you again for the opportunity to address this Committee. I look forward to your questions.

Senator Barbara Boxer

1. Mr. Williams, if confirmed to lead the Economic Development Administration (EDA), what would your top priorities be for the agency?

   If confirmed, among my top priorities would be to review current EDA programs to ensure that they are aligned with the economic vision articulated by the President and the Secretary of Commerce. Another priority would be to familiarize myself with EDA staff and stakeholders to help facilitate a shared vision for a path forward. We must ensure that EDA operations are meeting the needs of our constituents.

   At the end of my tenure, I hope to be able to identify numerous and diverse communities across the United States that have experienced direct and measureable economic improvement as a result of EDA activity in that community. As another accomplishment, we should have further solidified EDA's role as a critical partner in facilitating economic investment in our nation's distressed communities.

2. Mr. Williams, in your opening statement, you discussed your experience in helping Youngstown, OH, as it revitalized its economy. Could you discuss if EDA played a role in helping Youngstown shape its economic development?

   If so, can you elaborate on how you can take this successful experience and apply it to other regions and economically distressed communities across the country?

   EDA has played a key role in the revitalization of the Youngstown area's economy. There is one project in particular that I would like to highlight. When I was first elected Mayor, the City of Youngstown and Mahoning County had long been struggling with plant closures and adjustments related to changes within a declining U.S. steel manufacturing cluster. The City of Youngstown and not-for-profit organizations have actively encouraged new development in the downtown area. The City needed to accommodate local growth by constructing the Youngstown Technology Center adjacent to the current Youngstown Business Incubator that is used to house graduates of the Incubator and other local technology firms. EDA provided $2 million to fund this project that has already created hundreds of new technology jobs in the Youngstown area.

   Another project to note is located in Hermitage, PA. Although the EDA grant did not go directly to Youngstown, jobs in the Youngstown area have been created due to our regional approach to economic development. My direct experience with EDA arms me with first-hand knowledge of the impact their investments make in distressed communities. If confirmed, I will use this knowledge and experience to help create more successes in distressed regions across the country.

3. Mr. Williams, this Administration has made revitalizing our domestic manufacturing industry a top priority. Can you discus the role that EDA has played and would do in the future if you were to be confirmed?

EDA has played a pivotal role in the Administration's manufacturing strategy. Advanced manufacturing is where the future of American manufacturing lies. The sector includes cutting-edge producers in such fields as energy, medical devices, gene therapy, transportation, and aerospace. These manufacturers are successfully commercializing the latest advances in nanotechnology, biotechnology, and information technology, and even more advances in robotics and advanced materials are coming on line. Spurring innovation and entrepreneurship in ways that encourage the growth of advanced manufacturing industries is critical to economic development in all states and regions of our nation. Specifically, EDA has led a number of initiatives that have contributed significantly to these efforts such as Make it in America, Investing in Manufacturing Communities Partnership and others and, if confirmed, I look forward to working with Congress to enhance America's manufacturing sector.

Senator Cory A. Booker

1. Based upon EDA's Fiscal Year 2012 Annual Report, it appears that in 2012 the Economic Development Administration made only four investments in New Jersey. If confirmed, would you commit to working with me and my staff to identify and prioritize critical new investment opportunities in New Jersey?

If confirmed, I look forward to working with you and your staff to develop new investment opportunities in New Jersey. I would welcome the opportunity to meet with you and discuss these needs in greater detail, and direct you to appropriate staff in EDA's Philadelphia Regional Office who would be able to assist your constituents directly.

2. In the Department of Commerce's most recent Five Year Strategic Plan issued in 2011, one of the stated strategies to promote economic growth in disadvantaged/distressed areas is to make investments that foster resiliency to natural disasters. Cumberland County is the second poorest county in New Jersey, and while it was declared a disaster area in the aftermath of Hurricane Sandy, it did not meet the threshold for eligibility for most of the designated federal assistance. If confirmed, would you commit to working with me and my staff to identify investment opportunities that would foster resiliency in Cumberland County and other disadvantaged areas of New Jersey significantly impacted by Hurricane Sandy but receiving inadequate recovery resources?

It is my understanding that EDA has been actively engaged with other federal, state and local partners in helping New Jersey rebuild following Hurricane Sandy in 2012. If confirmed, I

pledge to continue EDA's efforts to help communities in New Jersey and across the nation recover following a natural disaster and receive the assistance necessary to make their economies more resilient.

Senator James Inhofe:

1. As a former mayor, you know first – hand the economic challenges faced by local communities, and that investment in infrastructure is a major way the federal government can help create jobs and lasting economic growth. If changes to monetary allocation are pursued, how will EDA ensure that small metropolitan and rural communities are represented?

   As a former mayor, I know and greatly appreciate the value of federal investments in infrastructure and other economic development projects, and I know that those small metropolitan and rural communities often need the assistance the most. If confirmed, I will work to serve communities of all sizes to help them meet their economic development needs.

2. There seems to be a shift of focus and funds from Public Works to Economic Adjustment. How will you ensure that regional offices will not lose their discretionary funds which are used to help smaller communities in the region?

   In this environment of scarce resources, it is more important than ever that EDA's investments be strategic and catalytic. Regional offices will continue to be vital in EDA's long established grassroots approach to project development, selection, and management. If confirmed, I would look forward to working with you to serve the needs of your constituents.

3. How will you ensure that regional offices maintain control of project selection to benefit local needs?

   One of EDA's strengths is its support of bottom-up, locally defined economic development projects. EDA's regional offices are key to identifying, supporting, and assisting communities with these projects. This hands-on approach has contributed to the number of successful projects across the country. If confirmed, I will be committed to ensuring that EDA maintains this bottom-up approach to economic development.

Senator BOXER. Thank you.
Ms. Suh.

STATEMENT OF RHEA SUN SUH, NOMINATED TO BE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR

Ms. SUH. Thank you, Madam Chair, Ranking Member and members of the Committee.

I think I actually have had a chance to meet with each one of you. I greatly appreciate the time that you have afforded me.

Unfortunately, my husband, Michael Carroll and my daughter, Yumi, are not able to join me today. My daughter actually has her very first Christmas pageant right now. With all due respect, there are greater priorities for a 3-year-old who has been practicing her songs and dance in the starring role of elf No. 3.

I am a child of the west. I was born in Colorado and raised by Korean immigrant parent who found their way to that great State like so many other pioneers with dreams of freedom and of a better life for their family. While my parents also could not be here today, I would like to acknowledge them as well. They came to America with nothing and in turn gave me and my sisters everything.

Like so many other Americans, I grew up reaping the benefits of the lands and waters managed by our Federal Government. My earliest memories are memories of being outside, fishing with my father, exploring for fossils and going to camp in the shadow of Rocky Mountain National Park. This tapestry of lands, the backdrop of my childhood, has influenced me and my values throughout my life.

For the past 4 and a half years, I have had the honor of serving as the Assistant Secretary for Policy, Management and Budget at the Department of the Interior. I have had the privilege of working with each of the nine bureaus at the Department on a broad array of issues. I have led efforts to secure the resources required by each of the bureaus to uphold their missions, but I have focused a concerted effort on ensuring that in these challenging fiscal times, we manage those resources in a manner that is both effective and efficient.

I have led the enterprise to achieve more than $500 million in savings and untold millions in cost avoidance, including $160 million in real estate consolidations and $200 million in smarter purchasing agreements.

While my most recent experience at the Department has focused more on administrative and fiscal policy, I have nearly two decades of issue experience on natural resources. I started my career as a Senate staffer working for Senator Ben Nighthorse Campbell from Colorado where I worked on both energy and natural resource policy.

I had the unusual opportunity to work on both sides of the aisle during that time, 2 years on the Democratic side and a year on the Republican side. This unique circumstance profoundly shaped my views on policy and left me with the strong belief that collaboration, while often not easy or straightforward, can result in the most creative and durable policy outcomes.

These beliefs helped guide me in my tenure as a program officer for both the Hewlett and the Packard Foundations where I continued to work on natural resource issues. In particular, I supported the efforts to expand the array of voices and perspectives on conservation including those of hunters and anglers, indigenous communities and faith-based organizations.

I am now before you today as the President's nominee for the Assistant Secretary of Fish, Wildlife and Parks, a position that would allow me to focus more concertedly on the critical work of conservation. I come to this opportunity with great humility as it would afford me the chance to work with two of the most storied agencies at the Department of the Interior, the Fish and Wildlife Service and the National Park Service.

Americans love the outdoors. We love to hunt and fish. We love our parks. The national refuge system is truly America's backyards. These are the places where millions of us go to hunt, fish and explore. These are among our Nation's most popular pastimes, and the Fish and Wildlife Service is uniquely positioned to welcome a new generation of Americans to be connected to the natural heritage that is our birthright.

When the National Park Service celebrates its 100th anniversary in 2016, we will have an even greater opportunity to renew the bonds Americans have with their parks. The National Park Service's second century is a defining moment, offering us an opportunity to celebrate America's natural and cultural history and to lay a strong and sensible foundation for the next century of stewardship.

From the first time I hooked a rainbow trout with my dad, I became the beneficiary of our Nation's rich natural heritage and if confirmed, I hope to continue the legacy of this bounty by strengthening the opportunities for Americans to be connected to and to benefit from the outdoors by pursuing pragmatic balance and solutions that contribute to the conservation of the Department's lands and waters for the benefit of all of the people of this great country.

Thank you, Madam Chairman and members of the Committee.

[The prepared statement of Ms. Suh follows:]

PREPARED STATEMENT OF RHEA SUH

NOMINEE FOR

ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS

BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Madam Chairman, Ranking Member, and Members of the Committee, thank you for the opportunity to be here today. Thank you also for the opportunity to meet with many of you in person.

I would like to acknowledge and thank my husband, Michael Carroll who agreed to come with me on this journey four years ago and my daughter Yeumi, who was a blessing for us nearly three years ago now. And while my parents—Chung Ha and Young Ja Suh—cannot be here today, I want to acknowledge them as well. They were young immigrants from Korea who came to this country in the early 60's with nothing and in turn gave me and my sisters everything. From my love of the outdoors to my commitment to public service, I am instilled with their love of this country and I owe everything to their sacrifices and courage.

For the past four years, I have had the honor of serving as the Assistant Secretary for Policy, Management and Budget at the Department of the Interior. It is chiefly a management position that is focused on the financial and administrative policy for the Department. I have had the privilege of working with each of the nine bureaus on a broad array of issues, but I have primarily been responsible for leading efforts to secure the resources to enable each of the bureaus to uphold their missions but also to ensure that we manage those resources in a manner that is both effective and efficient. In these challenging fiscal times, I have led the enterprise to achieve more than $500 million in savings and untold millions in cost avoidance, including $160 million associated with real estate consolidations and $200 million in smarter purchasing agreements. I have also led the longer-term efforts around workforce and succession planning and the policy efforts on youth.

I am now before you today as the President's nominee for the Assistant Secretary for Fish, Wildlife and Parks—a position that would allow me to focus more concertedly on the critical work of conservation.

For the members of the Committee whom I have not had the chance to get to know, I'd like to tell you a little bit about myself. I was born on the edge of the Rocky Mountains in Boulder, Colorado, and raised by Korean immigrant parents who found their way to that great State like so many other pioneers with the dreams of freedom and of a better life for their family. Like so many other westerners, I grew up reaping the benefits of the lands and waters managed by our Federal Government. My dad first taught me how to fish in waters managed by the Bureau of Reclamation. As a Girl Scout, I camped out under the starry skies in Rocky Mountain National Park, and in high school, I helped build a section of the Continental Divide Trail, which is in part managed by the Bureau of Land Management. This tapestry of lands, the backdrop of my childhood, has influenced me and my values throughout my life.

I come to this opportunity with great humility, as it would afford me the chance to work with two of the most storied and venerated agencies in the federal government: the Fish and Wildlife Service and the National Park Service. These agencies are the caretakers of some of our nation's most special places and most vulnerable species. And uniformly, I have never met a more passionate set of employees—dedicated in the missions of their organization and in their commitment to public service. At the top of the list are the directors of these agencies Dan Ashe and Jon Jarvis—public servants who have dedicated their careers to these special missions and to the critical work their organizations do on behalf of the American public.

Before I joined the government four and a half years ago, I spent my career focused on conservation issues. I started off as a senate staffer for Senator Ben Nighthorse Campbell, from my home state of Colorado, where I worked on energy and natural resource policy. I also had the unusual opportunity to work on both sides of the aisle during this time, spending two years on the Democratic side and a year on the Republican side. This unique circumstance profoundly shaped my views on policy and left me with the strong belief that collaboration, while often not easy or straightforward, can result in the most creative and durable policy outcomes.

These beliefs helped me in my tenure as a program officer for both the Hewlett and the Packard foundations, where I continued to work on natural resource issues. Both institutions have a keen interest in building institutional capacity within the non-profit sector, and I focused much of my efforts on helping the variety of NGOs we worked with on strategic planning and on developing appropriate metrics to help evaluate progress towards their goals. I also supported a number of efforts designed to create opportunities that could not only balance economic development and conservation but also that saw those twin goals as inexorably linked. My foundation experience also uniquely equips me to be able to work on innovative public-private partnerships to advance successful models that leverage Federal resources with those provided by the philanthropic community, partners, and other interested entities.

The opportunity to balance our economic needs with conservation is illustrated in fact that both the Fish and Wildlife Service and the National Park Service are significant contributors to local economies. According to the Department's FY2012 Economic Report, recreation alone drove an estimated 417 million visits to DOI managed sites, generating $45 billion to the American economy and supporting 372,000 jobs.

The national wildlife refuge system is truly America's backyard—the places where millions of us go to hunt, fish, hike and explore the outdoors. Hunting and fishing are among our nation's most popular pastimes; more than 41 percent of the US population 16 and older participated in wildlife-related outdoor recreation in 2011 and in some states, more people have hunting and fishing licenses than vote. However, as more and more children become attuned to technology and the internet rather than the natural chorus of the outdoors, the Fish and Wildlife Service can work to ensure that the next generation is also connected to the natural heritage that is our birthright as Americans.

The National Park Service manages Interior's most visited lands, and arguably the country's best known and loved sites. These destinations draw visitors from across the globe, and these visitors support over $30 billion in economic activity. When the National Park Service celebrates its

100th anniversary in 2016, we will have an even greater opportunity to renew the bond that Americans have with their parks. The beginning of the National Park Service's second century is a defining moment, offering us an opportunity to celebrate America's historical, cultural and natural heritage and to lay a strong, sensible foundation for the next century of stewardship.

Although it is clear that there are many challenges facing the two agencies, and conservation as a whole, I believe we have enormous opportunities in the near term. My skills in constituency building can help guide the agencies to ensure that our work is meaningful to all Americans, regardless of where they live or what cultural background they represent. And my experience in the Department, working side by side with these bureaus and others toward effective financial management, equip me to assist them in a constrained budget environment to effectively utilize their resources. During my tenure at DOI and in my previous work, I have developed relationships across government and with diverse stakeholders that will assist me in fostering a pragmatic, collaborative approach to conservation that builds coalitions across all of our constituencies in the interests of the American public we serve.

I am a child of the West. From the first time I hooked a rainbow trout with my Dad, I became the beneficiary of our nation's rich natural heritage. If confirmed, I hope to continue the legacy of this bounty by connecting the next generation of American's to their outdoors and of pursuing pragmatic, balanced conservation solutions that contribute to the sustainable use and management of the Department's lands and waters for the benefit of all the people of this great country.

Thank you again for the opportunity to be here today and I would be happy to answer any questions you may have.

Questions from Sen. Boxer

1. **Ms. Suh, I believe a commitment to scientific integrity is critical to successfully carrying out the responsibilities of the Assistant Secretary for Fish, Wildlife and Parks. At the beginning of the Obama Administration, the Department of Interior issued a new scientific integrity policy.**

   What role do you believe science should play in the work of the Department of the Interior, and in particular, the Fish and Wildlife Service?

   Response: I agree that a commitment to scientific integrity is critical to carrying out the responsibilities of the Assistant Secretary for Fish and Wildlife and Parks. I share the commitment of President Obama and Secretary Jewell to the policy of scientific integrity at the Department of the Interior. I believe objective science should inform management actions and policy discussions at the Department and within the Service. If confirmed, I will support the role of science as a foundation for the work of the Department and the Fish and Wildlife Service.

   If confirmed, how do you intend to fulfill the commitment to scientific integrity in your role as Assistant Secretary for Fish, Wildlife and Parks?

   Response: As an Assistant Secretary and senior manager in the Department, I adhere to and uphold the principles of Scientific Integrity in Secretarial Order 3305, Ensuring Scientific Integrity within the Department of the Interior, and if confirmed I will continue to uphold these principles. I will work with the Department's managers and their very strong team of scientists to continue to implement the Scientific Integrity Policy, established by Secretary Salazar in 2011. And I will also help sustain the strong peer review process within the Department and ensure effective science coordination among the bureaus and between the Department and other federal agencies, states, tribes, non-profit organizations, and academia.

Questions from Sen. Boxer

2. **Ms. Suh, the Endangered Species Act is one of our nation's most important environmental laws and has protected iconic species like the bald eagle. The ESA has also long-enjoyed bipartisan support.**

   The ESA's decades-long track record of success is built on the use of the best available science. It is important that the Assistant Secretary be committed to following and upholding this landmark law and using the best science in all decision-making.

   Do you believe upholding the ESA is important, and if confirmed, will you commit to implement the law based on the best available science?

   Response: Yes. By enacting the Endangered Species Act in 1973, Congress made the prevention of species extinction a national priority. The law has saved hundreds of species from extinction and has promoted science-based management of our nation's vital natural resources. I believe upholding the ESA is a critical component of the responsibilities of the Assistant Secretary for Fish and Wildlife and Parks and, if confirmed, I will commit to implement the law based on the best available science.

Questions from Sen. Boxer

3. **Ms. Suh, as Assistant Secretary, how would you leverage limited federal dollars and engage outside partners to fulfill the important mission of the Department of the Interior and the Fish and Wildlife Service?**

   Response: There are many programs and activities implemented by the Fish and Wildlife Service and the Department that engage outside partners, leveraging federal dollars, in fulfilling our vital missions. In particular, the Fish and Wildlife Service greatly benefits from grant programs like the Partners for Fish and Wildlife program, which works with private landowners to protect species habitat and leverages discretionary dollars with private contributions by a factor of 4 to 1 or more. The Fish and Wildlife Service also is the beneficiary of the National Fish and Wildlife Foundation, which operates a competitive challenge grant program that that has leveraged Federal dollars by 3 to 1 in recent years.

   I believe the key to successfully leveraging limited federal dollars is to ensure that those dollars are used to support programs and activities that produce results. Consequently, I am committed to taking an objective approach when evaluating the programs under my jurisdiction and realigning resources if needed to ensure that limited funding produces real results for the American public. Working with outside partners is a major ingredient in achieving results – not just because partners provide matching contributions that enhance federal dollars – but also because partner engagement increases buy-in and objective feedback. If confirmed, I plan to engage outside partners to help us fulfill the missions of the Department and Service.

Questions from Sen. Boxer

4. **Ms. Suh, the California Bay-Delta is the largest estuary on the West Coast, providing habitat to an array of species. The Delta is also critical for supplying water to much of the State. The State of California, water users, environmental interests, and the Federal agencies have been working toward developing a plan for restoration of the Delta, known as the Bay-Delta Conservation Plan, which was released for public review last week. The success of this effort depends on cooperation and leadership from the Federal agencies involved.**

   Will you commit, if confirmed, to make restoration of the California Bay-Delta a top priority and to work collaboratively with state of California and California stakeholders as they develop a solution to the issues facing the Delta?

   Response: The Department strongly supports efforts to protect, restore, and enhance the overall quality of the Bay-Delta environment and to provide a more reliable water supply for California. If confirmed, I will make restoration of the Bay-Delta a priority and will work collaboratively with the State of California, California stakeholders, and our federal partners to work toward solutions to the issues facing the Delta.

Questions from Sen. Boxer

5. **Ms. Suh, our nation's most respected scientists have shown that the changing climate will have considerable impacts on wildlife and their habitats across the United States. A wide array of conservation, hunting and fishing organizations also agree with this assessment.**

   Given the significant challenges that climate change presents, how do you believe the Fish and Wildlife Service can work cooperatively with outside stakeholders and landowners to address this growing threat?

   Response: I am a firm believer that public involvement is critical to the implementation of a meaningful response to the impacts of climate change on fish and wildlife and their habitats. The Fish and Wildlife Service is already working to address the impacts of climate change on our resources, and is committed to working closely with partners, stakeholders, and landowners to meet this challenge. The Service took the lead on behalf of the Department in developing a National Fish, Wildlife, and Plants Climate Adaptation Strategy that had been requested by Congress in the FY 2010 Interior Appropriations Act. Development of this Strategy was the result of a strong and active collaboration with the National Oceanic and Atmospheric Administration, fourteen other federal agencies, five state fish and wildlife agencies, and two inter-tribal natural resource commissions.

   The Strategy also received extensive public input, including significant tribal outreach, spanning over two years and received comments from more than 55,000 Americans. For the Strategy to be effective, it will require an unprecedented commitment to collaborating with our stakeholders, private landowners, and local communities. If confirmed, I would work to help facilitate the successful implementation of this strategy with our partners.

Questions from Sen. Boxer

6. **Ms. Suh, I am deeply concerned about the future of the Salton Sea in Southern California. According to a report by the Pacific Institute, "The Salton Sea lies on the brink of catastrophic change." The amount of water flowing into the sea has been declining and is expected to drop further in coming years, exposing dozens of square miles of dried lakebed to blowing winds. These changes are expected to have significant impacts on air quality and the millions of migratory waterfowl that rely on the sea.**

   The Department of the Interior will play a key role in the future of the Salton Sea. If confirmed, will you commit to work with me to ensure that the Department of Interior remains an active and engaged partner on Salton Sea restoration?

   Response: Yes. The Department has a significant interest in the Salton Sea stemming in part from its management of almost 38,000 acres, primarily as the Sonny Bono Salton Sea National Wildlife Refuge, through the Fish and Wildlife Service, and another 80,000 acres of mostly submerged land under the Sea managed by the Bureau of Reclamation. The Salton Sea Monitoring and Assessment Plan, which was developed by the State of California Departments of Water Resources and Fish and Wildlife and the Bureau of Reclamation and U.S. Geological Survey at the Department, was released in August 2013, and it aims to allow the assessment of existing ecosystem projects as well as establish a baseline against which to measure the success of future activities, contributing to more effective and targeted environmental mitigation efforts. If confirmed, I will work to ensure the Department of the Interior remains an active and engaged partner on Salton Sea restoration.

Questions from Sen. Udall

7. **I am very excited about a land conservation project nearing completion in Albuquerque, NM, through the establishment of the new Valle de Oro National Wildlife Refuge that will ensure a number of important conservation goals can be met: protection of valuable senior water rights, restoration of critical species habitat along the Rio Grande and a significant opportunity for outreach and environmental education to young people and other residents of a largely Hispanic community. This new urban wildlife refuge -- the only one in the southwest region of the USFWS -- has the promise to make a huge difference to the local community, the city and county - which put in a significant amount of its own funding - as well as ensure the health of the Rio Grande and critical wildlife habitat for years to come.**

   Your support for the Land and Water Conservation Fund is also greatly appreciated, and I appreciate the emphasis the Department has placed on this vital program in annual budgets and key investments. It has been a critical component of the funding that has gone to establish the new Valle de Oro NWR to date and we are counting on additional LWCF to complete the refuge.

   I hope that as you take on your new leadership role at the Department overseeing our fish, wildlife and parks resources you will prioritize the completion of the Price's Dairy acquisition at Valle de Oro NWR. This is a project that needs to be completed in FY 14 or the landowner agreement will expire and the refuge completion will be delayed.

   Can you provide any assurances that LWCF funding for Valle de Oro NWR will be considered a priority for FY 14 funding?

   Response: Acquisition of fee title to the final portion of this refuge has been a priority for the Fish and Wildlife Service and the Department, and we requested funding for this important acquisition in the President's fiscal year 2014 budget request. In my current capacity as the Assistant Secretary for Policy, Management and Budget, I have advocated for balanced budgets that meet the needs and priorities of all our bureaus and, if confirmed for the position of Assistant Secretary for Fish and Wildlife and Parks, I will continue to work to support the Service's priorities.

Questions from Sen. Booker

8. **America's newest national historical park is in New Jersey at the Paterson Great Falls, the spectacular natural wonder around which Alexander Hamilton founded the world's first planned industrial city. Congress passed bipartisan legislation to authorize the national park in 2009, but almost five years later the National Park presence is limited to two employees and one sign; there is not even a temporary visitor center to welcome and inform visitors. If confirmed, what would you do to help realize the extraordinary potential this new national park offers for New Jersey and the nation?**

   Response: I appreciate the importance of Paterson Great Falls National Historical Park. The park's establishment offers the opportunity both to preserve and interpret Paterson's nationally significant history and to strengthen and further stimulate historic preservation and economic activity in the city.

   New units of the National Park System typically start with very small budgets and limited staff. If confirmed, I will work to ensure that the development of the Paterson Great Falls NHP occurs as expeditiously as possible.

Questions from Sen. Booker

9. **A bill has been introduced to amend the Paterson Great Falls National Park boundary to include the adjacent Hinchliffe Stadium, a National Historic Landmark that was the home field for the New York Black Yankees and the New York Cubans in the Negro Leagues. If this historic stadium is added, would your office work to meaningfully incorporate the stadium into the national park?**

   Response: Hinchliffe Stadium has a very significant history in its own right, separate and apart from the historical resources related to Paterson's role in the development of manufacturing in our country. If Congress adds the stadium to the park, and if I am confirmed, I will work to ensure that the National Park Service tells the story associated with the stadium and treats it in a manner appropriate for a National Historic Landmark that has been included in a national park unit.

Questions from Sen. Vitter

10. **In 2011, the Fish and Wildlife Service entered into a settlement agreement with two litigious organizations that will require the Service to make listing determinations on more than 250 species. The agreements were made without consulting state or local government officials whose constituents will be forced to live with the consequences if, as expected, most of the species are found to be threatened or endangered.**

    a. **Do you support the 2011 settlement agreements?**

    Response: While I was not a party to any of the discussions or decisions regarding the development of these settlements, I am aware that the Service has finalized its plan to address the backlog of species that have been found to warrant protection under the ESA. I also understand that the agreement outlines the timeframe for listing determinations required under the ESA but does not prescribe outcomes for any of those listing determinations. I support a rational approach to listing determinations, one that provides clarity and predictability to landowners and stakeholders impacted by listing decisions and allows the Service to more effectively focus resources to those imperiled species most in need of protection.

    b. **Do you believe it was proper for the agreement to be reached without any consultation of state or local officials in areas that will ultimately be impacted by listed species?**

    Response: As stated above, I understand that the settlement committed the Service to make the listing determinations required by the ESA for more than 250 species on a workable and publicly available schedule. The agreement did not commit the Service to add these species to the list; rather, they committed the Service to make a determination by a date certain as to whether listing was still warranted, and if so, to publish a proposed rule – which would be subject to public notice and comment. As a matter of practice and policy, the Service seeks relevant input from states during the rulemaking process. The provisions of the ESA, the public comment period, and the independent scientific peer review of all listing proposals are designed to ensure meaningful opportunities for any additional relevant scientific information to be provided to the Service, or for deficiencies to be identified.

Questions from Sen. Vitter

11. **The Fish and Wildlife Service has told me that the agreement is a good thing because it allows them to plan for how they will make species determinations on the species that were part of the agreement through fiscal year 2018. Because it was framed as a good thing, Committee Republicans have been requesting information about the agreements for more than 1 year. We sent our first request on May 24, 2012. We received no response. We sent our second request on February 28, 2013. Again, we received no response. We sent our third request on June 26, 2013 and finally received a response on September 13 – more than 1 year after the original request was made. The timeframe for addressing the request was unacceptable.**

    a. **Will you commit to answering requests from the Committee in a timely manner?**

    b. **Even more unacceptable than the timeframe for response was the content of the response. In the letter, the Fish and Wildlife Service asserted that they could not provide Congress with any of the requested information because of the Service's interpretation of a District Court's rules related to alternative dispute resolution. The Service didn't bother to check with the Court to ask whether this interpretation that, in theory, prohibits any disclosure, applies to Congress.**

Response: I respect the role of Congress in overseeing activities of the Department of the Interior and that oversight requires the Department to be responsive to inquiries and requests. If confirmed, I commit to working with you and your staff in a collaborative manner and to ensure that requests for information received by the bureaus under the Assistant Secretary for Fish and Wildlife and Parks are addressed in a timely fashion.

Questions from Sen. Vitter

12. **The settlement agreements will impact every state. They will impact energy development and private property rights. Do you think this lack of transparency is acceptable? If you don't, how do you plan to implement changes at the Fish and Wildlife Service that will allow Congress to conduct appropriate oversight?**

    a. **Will you commit to providing the Committee with additional documents related to the settlement agreement so we can understand how it was developed and why the FWS decided to enter into it?**

    Response: As I noted in response to a previous question, I understand that the agreement commits the Service to make a determination by a date certain as to whether listing is still warranted and, if so, to publish a proposed rule, which would then be subject to public notice and comment. I support the ESA's public comment period and the independent scientific peer review of all listing proposals, which are designed to ensure meaningful opportunities for any additional relevant scientific information to be provided to the Service, or for deficiencies to be identified. As I noted above, if confirmed, I commit to working to ensure that requests for information received by the bureaus under the Assistant Secretary for Fish and Wildlife and Parks are addressed in a timely fashion.

Questions from Sen. Vitter

13. **One part of the settlement agreement that is of substantial concern to many states is the timeframes in the agreement to make listing determinations. The timeframes are arbitrary and problematic when you consider that many states have work underway to prevent species from being listed. Can you commit to giving states additional time to implement conservation measures if they have on the ground efforts underway to prevent a species listing?**

Response: I understand that the Service is committed to working with the states and the public during its process of making listing determinations on candidate species. Involvement of key stakeholders, including states, in the rulemaking process is a key to sound determinations, and is required by the ESA. I also know that the Service has and will continue to utilize the flexibility that the ESA provides for potential extensions. If confirmed, I will work to continue to support the Service's relationship with state governments and to ensure that state processes and timeframes are appropriately and adequately considered in all of the Service's listing determinations.

Questions from Sen. Vitter

14. **The U.S. Fish and Wildlife Service is currently considering whether to list the African Lion as endangered under the Endangered Species Act. The lion lives in a number of countries throughout Africa, with the largest population being in Tanzania. A decision to list the lion could have a significant impact on tourism and the economy for these African countries.**

    a. **In your current capacity, Assistant Secretary for Policy, Management and Budget, international issues fall under your purview. Are you aware of the African's efforts to meet with the U.S. Fish and Wildlife Service?**

    b. **The U.S. Fish and Wildlife Service has indicated that it has no intention of consulting with the governments of the affected African countries before making its listing decision. If confirmed, will you commit to having yourself and the Director of the U.S. Fish and Wildlife Service meet with Tanzanian officials prior to determining whether the African Lion should be listed?**

Response: My understanding is that the Service has consulted three times with the African range countries, with another meeting scheduled next month. If confirmed, I would be happy to meet with Tanzanian officials to discuss this matter.

Questions from Sen. Vitter

15. The U.S. Fish and Wildlife Service held a forum this summer to gather the best scientific information available regarding the African Lion. As reported by *National Geographic*, every expert at the forum reported that the African Lion is not on the brink of extinction in the wild.

Do you believe that a species should only be listed as endangered under the Endangered Species Act if it is on the brink of extinction in the wild? If so, will you promise to ensure that that standard is observed by the U.S. Fish and Wildlife Service in its listing decisions?

Response: The ESA requires a species to be listed if the Service determines that the species is in danger of extinction throughout all or a significant portion of its range (endangered), or is likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range (threatened). The decision to list a species is a science-based determination of whether or not a species is endangered or threatened as those terms are defined in the statute.

The ESA requires a species to be listed if the best available scientific information supports that determination under the standards and definitions set forth in the statute. I also understand that the Service interprets the definition in the Act to reflect the circumstance of a species being on the brink of extinction in the wild. If confirmed, I will ensure that all ESA decisions continue to follow the appropriate statutory standards.

Questions from Sen. Vitter

16. **In re Polar Bear Endangered Species Act Listing and Section 4(d) Litigation, 794 F.Supp.2d 65, 82-83 (D.D.C. 2011), the Service used a standard of what constitutes "endangered" as "on the brink of extinction in the wild." Is it reasonable to expect for future listing determinations, to be considered an endangered species, the species must currently be on the brink of extinction in the wild?**

    a. **Will this determination be made taking into consideration the life history and ecology of the species, the nature of threats it faces, and the species' response to those threats?**

    Response: Yes. My understanding is that the determination of species status is based on an individual analysis that takes into consideration life history characteristics, ecology of the species, and the nature of and responses to threats.

Questions from Sen. Vitter

17. Do you believe there should be a standard definition of what "endangered" means? If the definition may change on a species-by-species basis, then how is the public to know what the threshold is for each species prior to listing decisions?

Response: As I noted in response to a previous question, the ESA defines an "endangered species" as any species which is in danger of extinction throughout all or a significant portion of its range. I understand that the Service explains the basis for its view that this statutory definition is met in each proposed rule. And each proposed rule is made available for public review and comment and independent scientific peer review to inform the Service's final determination.

Questions from Sen. Vitter

18. Does the Service intend to use "on the brink of extinction in the wild" as its standard for the species involved in the "multi-species listing settlements" dated July 12, 2011 and May 10, 2011? Please explain in detail why or why not.

Response: I understand that the Service will continue to use the Endangered Species Act's definitions of endangered and threatened for the listing determinations associated with those settlement agreements, as the law requires. As I noted above, my understanding is that the Service does interpret the definition of an "endangered species" to reflect the circumstance of a species being on the brink of extinction in the wild.

Questions from Sen. Vitter

19. If, "on the brink of extinction in the wild" isn't a starting point, wouldn't it be arbitrary and capricious to treat species differently, or to make the determination with a lower threshold than the FWS used with the polar bear? If the "on the brink" standard is not used, will the standard used to determine "endangered" be as high of a threshold as "on the brink"?

Response: As I noted above, my understanding is that the Service does interpret the definition of an "endangered species" to reflect the circumstance of a species being on the brink of extinction in the wild.

Questions from Sen. Vitter

20. Dry conditions have compounded the impact regulatory pumping restrictions caused by the implementation of the Endangered Species Act on water deliveries to Federal Water Contractors in California's Central Valley. I am informed that in the upcoming year, that a water crisis may have dramatic and catastrophic impacts to the population of California and the nation and will result in the loss of thousands of jobs, the fallowing of thousands of acres of prime agricultural farmland, and rising local and national food costs. This and similar instances of regulatory restrictions causing harm arise all too often. If confirmed, you will have the responsibility to exercise significant policy discretion as to how the Endangered Species Act is implemented. Please explain to me how you will work with other Federal agencies and states in exercising your discretion in a manner that minimizes the negative impact the Endangered Species Act has on people.

Response: I know that the Department of the Interior and other federal agencies are closely monitoring the water situation California is facing due to ongoing and projected dry conditions and low reservoir storage. If confirmed, I will work closely with the Fish and Wildlife Service, Bureau of Reclamation, California Department of Water Resources, and other partners to continue appropriate protections for endangered and threatened fish species while fully considering, and where possible, minimizing, the possible impacts to water exports. Specifically, I am aware that the Fish and Wildlife Service, Bureau of Reclamation and others are working to implement relevant elements of Reclamation's 2014 Central Valley Project Water Plan, including testing of an index-based Old and Middle River flow compliance mechanism intended to improve performance of the water projects in achieving Old and Middle River flow targets and continuing the efforts to minimize entrainment of delta smelt and other fish.

Questions from Sen. Vitter

21. **Consultation under Section 7 of the ESA requires a federal agency to consult with the U.S. Fish and Wildlife Service to ensure that "any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [designated critical] habitat of such species..." Section 7 consultation obligations can be satisfied through "informal consultation" where an action agency determines, and the Service concurs, that the agency's action is not likely to adversely affect listed species or critical habitat – for example, where only beneficial effects will occur as a result of an environmentally protective rulemaking. If informal consultation between an action agency and the Service indicates that the action will result only in beneficial effects on listed species or critical habitat, would it be appropriate for the Service to nonetheless: (1) force the agency into formal consultation by refusing to concur in a "not likely to adversely affect" (NLAA) determination, or (2) require the action agency to undertake measures for the benefit of listed species or critical habitat (e.g., as a condition of receiving a NLAA concurrence or a no-jeopardy biological opinion)?**

Response: My understanding of Section 7 of the ESA is that actions that result only in beneficial effects to listed species or critical habitat, meaning no adverse effects to listed species (e.g. take) and no adverse effects to critical habitat, would not proceed to formal consultation or require adoption of conservation measures.

Questions from Sen. Vitter

22. Do you support the recent decision by the FWS to create a programmatic, 30-year permit that allows renewable energy producers to kill bald and golden eagles?

Response: While I was not a party to any of the discussions or decisions regarding the development of the revised rule, I understand that the changes were designed to address the operational life of energy projects and other activities while requiring permit holders to commit to appropriate management and mitigation measures. Further, it is important to note that there will be a review process every 5 years for the life of permits issued for more than 5 years to allow the Service to effectively manage the permits to offset detrimental impacts to eagles. I agree that the rule will help to advance development in a way that continues to secure healthy and thriving populations of federally-protected bald and golden eagles.

Questions from Sen. Vitter

23. Please provide me with a detailed list of all referrals made by the US Fish and Wildlife Service in the past four years to the Department of Justice recommending the Department of Justice look into potential violations of the Migratory Bird Treaty Act and of the Bald and Golden Eagle Protection Act by energy producers.

Response: The Service works closely with the Department of Justice to enforce the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. It is my understanding that Service agents often share information informally and formally with their counterparts in the U.S. Attorneys' Offices regarding ongoing investigations. I understand that the Service does not maintain a definitive list of all referrals to the Department of Justice. If confirmed, I commit to working with the Department of Justice to look into potential violations of the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

Questions from Sen. Vitter

24. As the Assistant Secretary for Policy, Management and Budget, you oversee contracting at the Department of the Interior. I am concerned about former political appointees who take advantage of their connections with the Department by using those connections to obtain contracts with the Department.

So that I can better understand the extent to which this practice is occurring, please provide me with a list of all contracts, subcontracts, and other similar agreements including, but not limited to, contracts associated with the Indian buyback program, that have been approved at the Department in the past four years to former political appointees or to firms that are associated with former political appointees.

Response: The Department has a commitment to transparency and sharing of information and posts its acquisitions on USASpending.gov. I understand that the Department does not maintain a specific list of all contracts, subcontracts, and other similar agreements including, but not limited to, contracts associated with the Indian buyback program, that have been awarded by the Department to former political appointees or to firms that are associated with former political appointees. In my current role as the Assistant Secretary for Policy, Management and Budget I oversee the Department's contracting program and I know that contracts are managed closely by career experts in Federal procurement. These professional employees help to ensure that all procurement actions meet all Federal legal requirements. Furthermore, government-wide ethics regulations help to guide these professionals in the protection of these interests. I take ethics issues very seriously and in my career in the Department I have made this a priority and will continue to do so.

Environment and Public Works Committee
Confirmation Hearing - Rhea Suh

Questions from Sen. Vitter
Supplemental Response to Question 24.

24. **On January 17, 2014, the Senate Environment and Public Works (EPW) Committee received your responses to questions that members submitted following your nomination hearing in December. Because you currently serve in a senior position at the Department of the Interior (Interior) and have done so since 2009, I am disappointed you did not provide the Committee with thorough answers about many policies implemented at Interior during this Administration.**

    Rather than follow up with numerous requests, I simply ask that you provide me with additional, comprehensive information regarding question 24, which is attached and relates to contracts given by Interior to former political appointees. In response to my questions, you stated that Interior posts information about spending and acquisitions on USASpending.gov. You further explained that Interior "does not maintain a specific list of contracts, subcontracts, and other similar agreements ... that have been awarded by the Department to former political appointees or firms that are associated with former political appointees." In your leadership role over Interior's contracting program, I expect you to provide a better answer on how the Interior tracks its contracts and detailing if is the common practice for former political appointees to receive contracts from Interior after they end their government service. Additionally, please provide thorough responses to the following questions:

    1. **Are all contracts, subcontracts, and other similar agreements approved at Interior listed on USASpending.gov?**
    2. **If there are contracts, subcontracts, or other similar agreements that are approved at Interior that are not listed on USASpending.gov, please provide me with a list of those contracts, subcontracts, or other similar agreements.**
    3. **Please provide me with a list of all individuals and entities that have received contracts, subcontracts, or other similar agreements that have been approved by Interior in relation to the Indian buyback program.**
    4. **Please provide me with a list of all political appointees who have served at Interior since January 20, 2009.**

    As the chief contracting officer at Interior, you are in charge of managing the budget. A complete answer to my questions is well within your competency. You have cited knowledge of issues within your management purview as one qualification for why you should be promoted to a new role within Interior. A thorough answer to these straightforward questions will help ensure that Interior is living up to President Obama's promise to run "the most transparent administration in history."

Environment and Public Works Committee
Confirmation Hearing - Rhea Suh

Response: Thank you for the clarifying questions. I appreciate the opportunity to provide you with more specific information. As I indicated in my initial response to you, the Department of the Interior has a staff of dedicated, professional career experts in Federal procurement who help to ensure that all procurement actions at the Department meet Federal legal requirements, and government-wide ethics regulations. Federal policy requires that the Department report all prime contracts and financial assistance awards on USASpending.gov. Subcontracts and subawards over $25,000 are required to be reported by the prime contractor or recipient of financial assistance.

The Department is committed to ensuring full compliance with this policy and transparency in the contracting and Federal assistance we provide. The deployment of all of our bureaus and offices to an integrated financial and business management system has greatly improved our ability to fulfill that commitment. Prior to the Department-wide integration of this management tool in November, 2013, all bureaus were not on the integrated system, and, because of technology limitations, it was not possible for those bureaus to report financial assistance awards to USASpending.gov. This limitation was identified in the Department's Open Government Plan, first published in April, 2010 and updated in April, 2012.

And as noted in my previous response, contracts, subcontracts, or other similar agreements with individuals and entities that have been approved by the Department in relation to the Land Buy-Back Program for Tribal Nations can be found on USASpending.gov. Within the category of financial assistance provided by the Department, including cooperative agreements, grants, loans, and other forms of assistance, however, there is a two to three month lag time between the time assistance is awarded and when it appears on the site.

The Department will require some additional time to gather the data you requested related to the Buy-Back Program. We are in the process of gathering this information both manually and through our automated system as quickly as possible.

Finally, I am including with this response a list of political appointees who have served at the Department since January 20, 2009.

ADAMS, GAIL A.
ADLER, JONATHAN E
AHMAD, FATIMA M.
AIDINOFF, MARC F
ANDERSON, ALLYSON K.
ANDERSON, JAMES E.
ANDROFF, BLAKE J.
ARCHULETA, DEANNA A.
BABAUTA, ANTHONY M.
BACA, SYLVIA V.
BAKALOV, RAYA V.
BARKOFF, KENDRA A.
BATTEN, KATHARINE M.
BEAN, MICHAEL J.
BEAUDREAU, TOMMY P.
BELIN, ALLETTA D.
BEYER, EMILY J
BIRNBAUM, S. ELIZABETH
BITTLEMAN, SARAH NMN
BLACK, STEVEN W.
BLAIR, JOHN WATSON
BOGARD, LAUREN E.
BOLING, EDWARD A.
BRATT, JEREMY DAVID
BROADIE, KRISTINA T.
BROMWICH, MICHAEL R.
BUCKNER, JASON L.
BUFFA, NICOLE NMN
CARAMANIAN, LORI L.
CARRILLO, FRANCISCO R.
CAVE, RODINA C
CONKLIN, MEGHAN M.
CUNNINGHAM, CELINA P
DANIEL-DAVIS, LAURA E.
DOHERTY, STEPHEN A.
DORSETT, CRAIG M
DUBIN, LINDSAY P.
ELTON, KIM S.
EMBIL, NANA EFUA E.
EVANS, FAYE A.
FAETH, LORRAINE V.

FARBER, MICHAEL D
FARQUHAR, EDWARD P.
FELDGUS, STEVEN H.
FETCHER, ADAM K.
FINEGAN, JORDAN N.
FINK, JASON M
FRENCH, MICHAEL J
FULLERTON, TIMOTHY A.
GARRIOTT, WIZIPAN NMN
GILBERT, ALAN J.
GILLETTE, JODI A.
GIMBEL, JENNIFER L
GRAVES, CARMIECE T.
HAMIDI, NAHAL NMN
HANLEY, JACQUELYNN K.
HARDING, STEPHENNE S
HARRIS, BRENT C.
HARRIS, SARAH E
HARTZ, TIMOTHY S.
HAYES, DAVID J.
HENDERSON, JOHN CHRISTOPH
HENSLEY, ELIZABETH FS
HILDEBRANDT, BETSY J.
HOSEIN, CHRISTOPHER D.
HUNDT, NATHANIEL P.
IACOBUCCI, FRANCIS R.
IHENETU, UDOAKU C.
ISEMAN, THOMAS M
ISHEE, MARY KATHERINE
JACKSON, J. ANDREW
JAVAID, ZAINA J
JAYO, DAVID GABRIEL
JOHNSON, TERESA L.
JOSEPH, RAY A.
JOURDANE, JONATHAN J.
KELLY, KATHERINE P
KEMKAR, NEALESH A.
KERSHAW, JESSICA L
KLEIN, ELIZABETH A.
KOENIGSBERG, MELISSA B.
LANE, KENNETH L.

LAVERDURE JR, DONALD E.
LEE-ASHLEY, MATTHEW G.
LEVISON, LARA K.
LEW, SHOSHANA M.
LEWIS, COURTENAY C.
LEWIS, WILMA A.
LILLIE, THOMAS H
LITTLEJOHN, MARC C.
LYONS, JAMES R
MANSOUR, CHRISTOPHER J.
MARQUEZ, LAURA R
MARSTERS, ELIZABETH S.
MCCARTY, SHAUNA L.
MILAKOFSKY, BENJAMIN E
MONTOYA, CARLY J.
MONTOYA, JORDAN R.
MUSE, QUEEN C.
MUSSENDEN, PAUL A.
NAWI, DAVID R.
NEIMEYER, SARAH C
NEWLAND, BRYAN T.
OLSON, ELIZABETH H
PADILLA, JOAN V.
PANANON, ISRAPORN
PERRIELLO, MARK L
PETERSON, SARAH E.
PETRILLO, THOMAS E.
POURCHOT, PATRICK J.
PUSTAY, KATHERINE D.
QUINN, SUSAN PEREZ
RIVERA, RAYMOND L.
ROBERTS, LAWRENCE SCOTT
RODRIGUEZ, JULIE C.
RUPP, KATHERINE C
RUSSIN, LEAH J
SABOCHIK, KATELYN A.
SALERNO, BRIAN M
SANDER, KIRK M.
SARABIA, JENNY E.
SCHWARTZ, MELISSA A
SCOTT, JANEA A.

SCRENAR, BRIAN C.
SHAFROTH, WILLIAM G.
SILVA-BANUELOS, JORGE G.
SISK, JENNIFER R
STANTON, ROBERT G.
STEVENS, TRACIE L.
STONE, R. RENEE
STRICKLAND, THOMAS L.
THORNHILL, ALAN D.
TRUJILLO, TANYA M.
TSOSIE, PAUL H.
TUBBS, JOHN E.
TUMEN, SARA E.
URBAN, HEATHER M.
URIARTE, CARLOS FELIPE
WALLS, ERIN M
WALSH, COLIN D.
WATSON, JAMES A.
WODDER, REBECCA R.

Questions from Sen. Vitter

25. **During your time at the Hewlett Foundation and then at the Packard Foundation, you were in charge of administering grants from those Foundations. A record of the grantees during your time at both organizations is of some concern to me because a number of the grantees are radical environmental groups who routinely sue the federal government, and in particular, who sue the Department of the Interior over land management decisions.**

    What makes me so concerned is the idea that the Fish and Wildlife Service is an agency that has routinely entered into "sue and settle" agreements with anti-development groups. You've been quoted as noting that natural gas is a "threat." You've helped administer grants that went to radical environmental groups. You've been part of the Department of the Interior at a time when the Department instituted the drilling moratorium, and as you noted last week, you were involved at some level in every significant policy decision made at the Department over the past four years. How can we trust that you won't pursue an anti-development agenda if you are confirmed to the Assistant Secretary's position?

    Response: My record as Assistant Secretary for Policy, Management and Budget demonstrates my commitment to the multiple uses of our public lands and to the importance of energy development on federal lands and waters. I have advocated for and secured increases in our energy program budgets to support the facilitation of permitting processes for the Bureau of Land Management, Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement. Since 2009, the energy program budgets for these bureaus has increased by $108 million or nearly 25 percent.

    My work at both the Hewlett and Packard Foundations was guided by my belief that conservation can and should go hand in hand with economic development. The evidence for this includes grants to the Upper Colorado Endangered Fish Recovery Program – a collaborative effort with Colorado River water users to meet the requirements of the ESA; the Tongass Roundtable process, which brought together a diverse group of stakeholders to discuss how to incorporate economic, cultural, and ecological values in public policy issues throughout the region; support for voluntary easements with ranchers and farmers through community land trusts to keep working lands viable throughout the West; support for local community foundations to improve long-term community economic development plans; and support for consensus training processes for land managers and environmental organizations.

    If confirmed for the Assistant Secretary of Fish and Wildlife and Parks, I will continue to be guided by my commitment to balanced decisions that support conservation and economic development.

Questions from Sen. Vitter

26. Can you assure the Committee that none of the money you approved in grants at the Hewlett Foundation or at the Packard Foundation was eventually used to sue the Department of the Interior over decisions that will be under your purview if you are confirmed as Assistant Secretary of Fish, Wildlife, and Parks?

Response: As a program officer at both the Hewlett and Packard foundations, I did not approve grants; the authority to approve grants rests in the boards of the organizations. Many of the grants awarded during this time were general support grants to build institutional capacity for their grantees, helping them identify goals and indicators of their progress, as well as evaluating their success. The guiding principles they followed included making positive contributions to society; a belief in collaboration with others; and support for independent, non-partisan approaches. The grants were not designed to focus on specific policy actions or legal actions.

Questions from Sen. Vitter

27. In your opening statement, you discuss your ability to foster a "collaborative" approach to conservation. Do you believe that using the President's power to unilaterally designate areas as a national monument without the consent of local communities fits within that collaborative approach that you hope to bring to the role of Assistant Secretary for Fish, Wildlife, and Parks? Will you commit to consulting with members of Congress who represent potentially designated lands before making a recommendation to President Obama or Secretary Jewell that an area should be designated?

Response: I agree with and, if confirmed, would be guided by Secretary Jewell's belief that potential monument designations should focus on areas where there is a groundswell of public support, and where there is a commitment to public engagement and the involvement of local communities and Members of Congress.

Questions from Sen. Vitter

28. As a policy matter, do you support the January 9, 2012 decision by former Secretary Salazar to withdraw 1 million acres of public land in Arizona from mining claims for the next 20 years?

Response: While I was not involved in the decision, I understand that the withdrawal does not prohibit existing mining operations in the area, which may continue without interruption, and that valid existing rights will be honored, including the initiation of operations for mining claims validated prior to the withdrawal.

Questions from Sen. Vitter

29. As a policy matter, do you believe it was the proper decision by former Secretary Salazar to cancel 77 federal oil and gas leases in February 2009?

Response: Secretary Salazar's decision to withdraw the leases was made prior to my nomination by the President to be Assistant Secretary for Policy, Management and Budget. I support then-Secretary Salazar's and Secretary Jewell's efforts to ensure that oil and gas leasing is done in the right way in the right places, to reduce delays and impediments caused by cumbersome and costly litigation.

Questions from Sen. Inhofe

Ms. Suh, the Service's Oct. 2, 2013 proposed listing decision for the Northern long-eared bat (NLE bat) repeatedly observes that the species is notoriously elusive, particularly during winter hibernation, and that it hibernates in areas that oftentimes are inaccessible or unobservable to scientists conducting winter bat population surveys. Yet the proposed listing decision relies on those winter surveys as primary evidence that the NLE bat should be listed as endangered.

30. **Given the ample evidence from summer bat surveys that the NLE bat is far more prevalent than the winter surveys suggest, shouldn't the Service rely on those summer surveys to make its listing decision?**

31. **Or if more information is needed, shouldn't the Service coordinate a comprehensive NLE bat summer survey rather than rely on admittedly inaccurate data?**

32. **Given that the Service expressly recognizes that white nose syndrome (WNS) alone is the cause for its proposal to list the NLE bat as endangered, that WNS is not present throughout all of the NLE bat's range, and that the species has not experienced data-backed population level effects even in all of the states where WNS has been detected, what is the legal basis for proposing to list the NLE bat as endangered throughout its entire range?**

33. **If it is to be listed at all, doesn't the NLE bat more appropriately fall within the definition of "threatened" – a species at risk of becoming endangered in the foreseeable future throughout all or a significant portion of its range?**

Response to 30-33: While I have not been involved in the proposed listing of the northern long-eared bat, I do know that the Fish and Wildlife Service is committed to using the best scientific and commercial data available when making listing determinations. I understand that the Service's standard practice is to request independent scientific peer review of their proposed listing rules, and that the Service requests comments from the general public, states, tribes, and federal agencies on proposed listing rules and incorporates comments and data received as appropriate.

The Service opened a 60-day comment period on the proposed listing rule in October, 2013, and extended the comment period in December for an additional 30 days. I understand that the Service evaluates the proposed status determination in light of comments and new information received, and revises the proposed rule as appropriate when making a final listing determination. I would be happy to meet with you or your staff so that relevant experts within the Service can provide you with additional information on this issue.

Questions from Sen. Barrasso

34. In a June 1, 2007 interview with the Hewlett Foundation while you were employed there, you were asked why the Foundation focuses their environmental efforts in the West, which the interviewer said the Foundation does not do in other regions.

You stated that your goal was to "preserve the region and see to it that it's managed prudently." You then spoke about public lands issues, but finished by saying-

> **"The one issue that isn't specific to public lands is the effort to raise more public money to buy and preserve significant tracts of private land."**

If confirmed, through the Fish and Wildlife Service and National Park Service, you will have great influence as to where Land and Water Conservation funds are spent. These funds would be used to acquire significant amounts of private land using taxpayer dollars. Nearly half of Wyoming is federally owned, which already creates barriers to economic development.

How can I assure my constituents that if confirmed you will not use your office to federalize a significant amount of Wyoming's private land?

Response: The land acquisition component of the Department's budget is intended to be a long-term investment as part of a balanced approach intended to protect our natural and cultural treasures, support the robust outdoor recreation economy, and bolster conservation practices on private lands. The LWCF enables the Department to acquire lands in fee or through conservation easements, the latter of which allows land to be conserved while remaining in private ownership. Conservation easements with willing sellers funded through LWCF have allowed us to support conservation stewardship on private lands, keep working lands working and contribute to local rural economies. In addition, a significant portion of the LWCF supports grant programs for states and local partners and does not entail federal acquisition.

When LWCF funds are used for acquisition, acquisitions by Departmental bureaus are strategic -- allowing us to join with willing partners to conserve significant landscapes before they require more expensive efforts to sustain them, resolve conflicts, and reduce landscape fragmentation, which makes it more efficient to protect wildlife habitat, respond to wildfires and other natural disasters, and to improve access to recreational opportunities. A great example of the recent use of LWCF funds with strong local support is the acquisition of a state-owned inholding in Grand Teton National Park, which draws millions of domestic and international visitors annually and serves as an anchor for the local tourism economy. If confirmed, I commit to ensuring our acquisition efforts are targeted at those opportunities that improve management, reduce conflicts, and most importantly are conducted with willing sellers.

Questions from Sen. Barrasso

35. At your 2013 nomination hearing in the Senate Energy and Natural Resources Committee, Ranking Member Senator Murkowski expressed concerns regarding your experience. You are being asked to head up two major federal agencies that focus on big picture policy initiatives. In her view, Senator Murkowski stated that you, if confirmed, will-

> **"have a pretty steep learning curve here when it comes to those policy implications on a state like Alaska where the federal landlord is so present there."**

Do you believe you have the relevant policy experience in working in states like Alaska and Wyoming that have a significant amount of federal land?

Response: Yes. I have almost twenty years of experience working on public lands and natural resource policy, mainly focused on the West. From my time as a Legislative Assistant for Senator Ben Nighthorse Campbell to my tenure as a program officer at two foundations with conservation programs in the West, I have worked on a broad range of issues and engaged with stakeholders representing diverse interests and perspectives.

In my current role as Assistant Secretary for Policy, Management and Budget, I have the opportunity to work with each of the bureaus throughout the Department of the Interior. One of my primary responsibilities is the formulation and execution of the Department's budget. In that capacity I have been involved in Secretary Salazar's and Secretary Jewell's major policy priorities, ensuring that we have the resources and that those resources are deployed effectively to implement those policy priorities. I believe my knowledge of the Department's programs and my experiences are important attributes that I will carry to the new position, if I am confirmed.

Questions from Sen. Barrasso

36. On June 7th, 2012 the White House released your biography for an event. In it, the White House states that you created the "Hewlett Foundation's energy program."

On the Hewlett Foundation's web page for their energy program, the Foundation states-

> **"Making grants to organizations whose work involves reducing dependence on coal and other high-carbon fuels is essential, but not enough to solve our problem.**
>
> **To meet the world's energy needs, Foundation grantees also work to support the production of energy from renewable sources like solar, wind, and geothermal; increase energy efficiency; and adopt and implement clean transportation policies that include fuel economy standards, mass transit, and bike lanes."**

The website does not mention natural gas.

Is natural gas one of the high-carbon fuels the Foundation was trying to eliminate as part of their energy program?

Response: The Hewlett Foundation's energy program was created to respond to the California electricity crisis in 2000. The grants I recommended were to study the effects of the partial de-regulation of the electricity sector in California. At the time, the State was in a crisis with a series of rolling blackouts with record high electricity prices. The energy program evolved during my tenure at Hewlett but I was not responsible for the grantmaking in this portfolio. At the time, the Hewlett program was focused on ensuring the clean and efficient production of energy, not on the elimination of natural gas or other fossil fuels.

Questions from Sen. Boozman

National Mitigation Fish Hatcheries

Ms. Suh:

I have concerns with the National Fish Hatchery System, and in particular the hatcheries in Arkansas, at Norfork and Greers Ferry. These are 100% mitigation hatcheries. In other words, the sole purpose of these hatcheries is to mitigate impacts that federal water projects have on our fisheries in Arkansas. This is a serious obligation, and the federal government must be committed to continue this work at both sites. I understand that Fish and Wildlife Service seeks reimbursement from other agencies that carry mitigation responsibilities. While I support reimbursement, I am concerned that as an alternative to traditional Fish and Wildlife Service funding, reimbursement remains uncertain.

37. **Will you provide your commitment to me, to the Arkansas Delegation, and to other members with mitigation hatcheries in the States, that you will prioritize the continued mitigation work at these hatcheries, and will do all you can within your power to prioritize resources for the operation, maintenance, and improvement of these facilities?**

    Response: The fish and aquatic resources in the southeastern United States are some of the richest and most diverse in the world. I recognize these national assets provide tremendous ecological and economic benefits and recreational opportunities that enhance the quality of life for surrounding communities and contribute to the Nation's overall biological and economic health. At a time of increasing costs of operations, the national fish hatchery program has been greatly impacted by sequestration, which reduced the program's budget. If confirmed, I commit to working with the Fish and Wildlife Service and federal, state and local partners on a sustainable, long-term operations strategy for the fish hatchery system that supports the Service's highest fish and aquatic conservation priorities within its budget limitations.

Questions from Sen. Boozman

Responses to Congress / Transparency of Settlements & Access to Interested Intervenors

Ms. Suh:

I join a number of members who are concerned with the outcome of the settlement agreements between the Fish and Wildlife Service and several organizations that will lead to listing determinations for more than hundreds of species. Along with Senator Sessions and other members of this Committee, I have pursued a number transparency requests surrounding these agreements, and our requests have been repeatedly stonewalled by the Department. In addition to the lack of substantive responses, we often wait months for a letter. Even if we don't like the answer we get, waiting months for a non-substantive response is unacceptable.

38. As a former Hill staffer, what is your view on the appropriate length of time for an agency to take to respond to a Congressional request for information?

Response: I respect the role of Congress in overseeing activities of the Department of the Interior. While I have not been involved in this matter in my current capacity at the Department, it is my view that the Department and its bureaus should respond to all requests for information in a timely fashion.

Questions from Sen. Boozman

39. Will you commit to work with Senator Sessions, myself, and other members of the Committee to determine why our transparency requests have been denied, and if the problem is rooted in policy, will you work with us and within the administration to try to fix the policy?

Response: Yes, if confirmed, I will work with you and Senator Sessions to better understand the nature of the issues and will work to ensure that requests for information received by the bureaus under the Assistant Secretary for Fish and Wildlife and Parks are addressed in a timely fashion.

Questions from Sen. Boozman

40. In response to a question I asked during a Senate Appropriations Committee Hearing on June 6, 2013, Attorney General Eric Holder wrote that "while the Department would typically consult with the client agency, any decision regarding what position the government will take regarding intervention or participation in settlement negotiations ultimately rests with the Justice Department." However, the Attorney General immediately continued that "the Department gives its client agencies' views considerable weight as to all significant litigation decisions."

a. Therefore, since the Department of Justice (DOJ) gives FWS's views considerable weight as to all significant litigation decisions, are you aware as to whether FWS expressed any views to the DOJ during the multidistrict litigation (In re Endangered Species Act Section 4 Deadline Litigation, D.D.C. MDL Docket No. 2165) regarding the inclusion of intervenors or other possible participants (such as state wildlife agencies) in settlement negotiations?

b. If so, please explain in detail, and provide copies of any related records of communication between FWS and DOJ.

c. If you are not aware of any such FWS interactions with DOJ, please state whether, as a general rule, you believe intervenors should be allowed to participate in settlement negotiations.

d. Also, please state whether FWS should have supported access for intervenors (such as state wildlife agencies) in this case.

e. And do you believe that FWS should work with the Department of Justice to ensure that impacted citizens, local communities, and states have an opportunity to intervene in litigation?

Response: I am not aware of the context in which Attorney General Holder made these statements, but as I noted in response to a previous question I have not been involved in this matter in my current capacity at the Department and I am not aware of any statements that the Service may have made to the Department of Justice regarding this matter. As I noted at my hearing, however, I believe collaboration among parties should be a priority and, if confirmed, I commit to working to ensure that the bureaus I would oversee carry out their responsibilities in a manner that is responsive to the concerns of the local communities and the resources we manage.

Questions from Sen. Boozman

Interior Attorney Fee Claims and Payments:

Ms. Suh:

41. Please provide a description of actions the Interior Department has taken to address inadequacies identified by GAO in the Report titled *Limited Data Available on USDA and Interior Attorney Fee Claims and Payments* (GAO-12-417R).

Response: The Department reports in our annual congressional budget justification for the Office of the Solicitor the annual expenditures on two types of litigation payments, those for the Endangered Species Act and those made pursuant to Equal Access to Justice Act authority. The GAO did not make any specific recommendations and, therefore, I understand that there is no corrective action plan necessary in response to that report.

Questions from Sen. Boozman

42. Do you believe Interior's response to GAO-12-417R has been adequate to provide transparency to taxpayers? Please elaborate, and if you feel that it has been inadequate, please describe any steps you would take to improve the response?

Response: As indicated in the response to the previous question, even though the GAO had no specific recommendations for the Department, we continue to provide reporting on Endangered Species and Equal Access to Justice mitigation payments each year in our annual budget justification.

Questions from Sen. Boozman

Allocation of NPS Funding to Arkansas NPS Sites:

Ms. Suh:

43. Although the fifth largest Civil War Battlefield Park, Pea Ridge National Military Park in Arkansas, consistently receives the smallest or one of the smallest allocations of resources among all of the NPS Battlefield parks. The resource allocation problem is not limited to Pea Ridge. Too often, sites across Arkansas are under-funded. I understand that funds are tight at all Park Service units, but our sites in Arkansas should receive a fair allocation of available resources. As we prepare for the Parks Service Centennial, I am committed to working as a member of the Appropriations Committee to provide resources to the Park Service to perform its mission during these difficult budget times. Will you commit to work with me and other members of the Arkansas Delegation to ensure that the share of resources allocated to National Park Service units in Arkansas is fair and equitable?

Response: I appreciate your support for providing resources to the National Park Service. Many factors are weighed in deciding how to allocate limited funds to individual units of the National Park System. If confirmed, I will work with you to ensure that the share of resources allocated to units in Arkansas, and elsewhere, is fair and equitable.

Questions from Sen. Boozman

NPS Community Relations

Ms. Suh:

Communities in Arkansas have experienced decades-long problems of poor communication from and relations with the National Park Service, particularly along the Buffalo National River.

Very recent efforts by the NPS Director and others to improve relationships are appreciated, but this must be a long-term, ongoing effort that will require the Park Service to work extremely hard to explain its actions, to listen to the community, and to respond promptly to concerns. Improving community relationships at all of the Park Service and Fish and Wildlife Service Units in Arkansas is very important to the Arkansas Delegation.

44. What is your view regarding the role of the Department of Interior in improving relationships with citizens and communities that use federal land or that are adjacent to federal land?

Response: Building and improving relationships with citizens and communities that are affected by federal land management decisions will be one of my most important goals, if confirmed. I have a long history of working with citizens and communities to reach common ground on solutions that work. If confirmed, I look forward to using the role of Assistant Secretary to strengthen the relationships between the National Park Service and the Fish and Wildlife Service and the landowners and stakeholders who are impacted by the management decisions of these two agencies.

Questions from Sen. Boozman

45. Will you commit to work with the Arkansas Delegation to address citizen, concessionaire, and community relation concerns, when necessary?

Response: Yes. If confirmed, I would be glad to work with the Arkansas delegation to address, on a timely basis, any concerns that arise from citizens, concessioners, and others related to lands and programs managed by the National Park Service and the Fish and Wildlife Service.

Senator BOXER. Thank you so much, Ms. Suh.

Dr. Burke.

STATEMENT OF THOMAS A. BURKE, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. BURKE. Good afternoon, Chairman Boxer, Ranking Member Vitter and members of the Committee.

It is an honor to appear here today as President Obama's nominee to be the Assistant Administrator for Research and Development at EPA.

I have devoted my career to advancing public health and environmental protection. For more than 35 of EPA's 43 years, I have worked closely with the agency as a State scientist, public health official, researcher and member of the Science Advisory Board. I have also served on the Board of Environmental Studies at the National Academy of Sciences and chaired a number of Academy studies looking at science at the EPA.

As with most people, my interests were shaped by my early experiences. Growing up in Jersey City in the shadow of the Statue of Liberty, I have vivid memories of my early environment before there was an EPA: the musty smell of low tide in New York Harbor; the summer spraying of DDT; the cleaning solvents from the industrial laundries; the black plumes from the Jersey Central locomotives; and the chemical mountains, giant slag heaps from the chromium factories.

I also had an early interest in health and disease. Born with a congenital heart defect, I was blessed to have lifesaving open heart surgery at Johns Hopkins. Three of my close childhood friends were not so fortunate and died from leukemia and brain cancer.

My interest in the connection between environment and health were galvanized during my graduate studies at the University of Texas when the National Cancer Institute released an Atlas of Cancer Mortality showing that my home State led the Nation in cancer deaths. The media dubbed it cancer alley.

After graduate school, I was named Director of the New Jersey Office of Cancer and Toxic Substances Research. I led research on toxic and cancer-causing pollutants that shaped many State and national approaches to ensure the safety of our drinking water, reduced toxic releases and clean up of hazardous waste sites. I also investigated childhood clusters of cancer.

As a State scientist, I served three Governors, both Republican and Democrat. I stood at their sides during environmental emergencies like the dioxin contamination in the Ironbound section of Newark and the closure of our beaches from sewage spills and medical waste. I was also fortunate to work with the late Senator Frank Lautenberg in his efforts to improve chemical safety and prevent cancer.

My experiences have given me a very practical perspective on the importance of strong science to guide difficult environmental decisions. I am proud that New Jersey is now a national example of the important link between a healthy environment and economic growth.

At Johns Hopkins at the Risk Science Institute, my colleagues and I work to advance science, evaluating and communicating risk. I have the privilege to train many of the emerging leaders in environmental science, some of who are here today. I have also worked closely with State and local officials and our Federal agencies on numerous important issues including emergency preparedness, the chemical exposures to our troops, the toxic flood waters of Katrina, nuclear waste clean up and the safety of our food supply.

Through the National Academy of Sciences and the EPA Science Advisory Board, I have worked to push EPA to do better science to address the needs of decisionmakers. I chaired the NAS Committee on Improving Risk Analysis that provided the report, Science and Decisions, providing a framework for the future of risk assessment.

While I have not been shy about pushing EPA to do better science, I do have a deep respect for the work of agency scientists. Science is indeed the backbone of EPA decisionmaking, and it has been the foundation of our Nation's environmental progress over the past four decades. I believe those tasks making these important decisions regarding environmental protection for the public good need to be informed by the best science, science that is credible, transparent, timely and inclusive.

If confirmed, I look forward to working with the members of this Committee, stakeholders in business and industry, State and local partners and the broader scientific community to make sure that EPA is asking the right questions and getting the best scientific answers.

I thank you, Chairman Boxer and members of the Committee, for this opportunity to meet with you today. I am happy to answer any questions.

Since I have a few seconds, I want to acknowledge my family and my sons Matt and Tim who are watching, my wife, Margo and my daughter, Emily, who are here today.

[The prepared statement of Mr. Burke follows:]

STATEMENT OF THOMAS A. BURKE
NOMINEE FOR ASSISTANT ADMINISTRATOR FOR THE
OFFICE OF RESEARCH AND DEVELOPMENT
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
2013

Good afternoon Chairman Boxer, Ranking Member Vitter and other Members of the Committee.

It is an honor to appear before you today as President Obama's nominee to be Assistant Administrator for Research and Development for the U.S. Environmental Protection Agency (EPA).

I have devoted my career to advancing public health and environmental protection. For more that 35 of EPA's 43 years, I have worked closely with the agency as a state scientist, public health official, research investigator, member of the Science Advisory Board and member of the Board of Scientific Counselors. I have also served on the Board on Environmental Studies and Toxicology of the National Academy of Sciences and chaired a number of major Academy studies of EPA science.

As it is with most people, my interests were shaped by my early experiences. Growing up in Jersey City in the shadow of the Statue of Liberty, I have vivid memories of my early environment before there was an EPA - the musty smell of low tide in New York Harbor; the summer spraying of DDT; the incinerators; the cleaning solvents from the industrial laundry behind our tenement apartment; the black plumes from the Jersey Central locomotives; and the "Chemical Mountains" – giant slag heaps from the chromium factories one block from my childhood home.

I also had an early interest in health and disease. Born with a congenital heart defect, I was blessed to have life-saving open heart surgery at Johns Hopkins. Three of my close childhood friends were not so fortunate; they died from leukemia and brain cancer.

My interests in the connection between environment and health were galvanized during my graduate studies at the University of Texas when the National Cancer Institute released an atlas of cancer mortality showing that my home state led the nation in cancer deaths. The media dubbed it "Cancer Alley".

After graduate school, I was named Director of the New Jersey Office of Cancer and Toxic Substances Research. I led the early research that shaped many state and national approaches into identifying and reducing toxic and cancer causing pollutants in the environment, including: ensuring safe drinking water, reducing toxic releases and cleanup of hazardous wastes. I also investigated childhood cancer clusters.

As a state scientist leading scientific investigations, I served three governors, both Republicans and Democrats. I stood at their sides during environmental emergencies like the dioxin contamination of the Ironbound section of Newark, the chromium pollution in Jersey City, and the closure of our beaches from sewage spills and medical waste. I was also fortunate to work with the late Senator Frank Lautenberg on his efforts to improve chemical safety and prevent cancer. These experiences have given me a practical perspective on the importance of strong science to guide difficult environmental health decisions. I am proud that New Jersey is now a leader in environmental protection and a national example of the important link between a healthy environment and economic growth.

At Johns Hopkins, I have devoted myself to improving the application of science to environmental policy decision-making. As Director of the Johns Hopkins Risk Sciences and Public Policy Institute, my colleagues and I work to advance the science of evaluating and communicating risk through education, research and technical assistance. I am proud that we trained many of the emerging leaders in environmental science policy. We have also worked closely with state and local officials and our Federal agencies on numerous critical issues including emergency preparedness, chemical exposures of our troops, the toxic floodwaters of Katrina, nuclear waste cleanup, and the safety of our food supply.

Through the National Academy of Sciences (NAS) and the EPA Science Advisory Board (SAB), I have worked to advance science at EPA – to do better science to address the needs of decision-makers. I chaired the NAS Committee on Improving Risk Analysis that produced the report *Science and Decisions*, providing a framework for the future of risk assessment. I also chaired the EPA SAB Committee on Science Integration, recommending ways to get the best science to inform EPA decisions.

While I have not been shy about pushing EPA to do better science, I have a deep respect for the work of the Agency scientists. Science is indeed the "backbone" of EPA decision-making, and has been the foundation of our nation's environmental progress over the past four decades.

I believe that those tasked with making these important decisions regarding environmental protection for the public good need to be informed by the best science. Science that is credible, transparent, and inclusive.

If confirmed, I look forward to working with the Members of this Committee, stakeholders in business and industry, state and local partners, and the broader scientific community to make sure we are asking the right questions and getting the best scientific answers.

I thank you Chairman Boxer and Members of the Committee for this opportunity to meet with you today. I am happy to answer any questions.

Questions for the Record
December 17, 2013 Hearing on the Nomination of
Thomas Burke to be Assistant Administrator of the
Office of Research and Development, U.S. Environmental Protection Agency
Committee on Environment and Public Works
United States Senate

Senator Barbara Boxer

1. Dr. Burke, do you agree that the Environmental Protection Agency (EPA) should use the current, best available science when making decisions on how to best protect human health and the environment, including implementing the recommendations of the National Academy of Sciences (NAS)?

Response: I agree that EPA should use the most current and best available peer reviewed science to inform decisions on protecting health and the environment. As chair and member of several National Academy of Sciences studies examining EPA science, I also agree that the agency should be responsive to the recommendations of the Academy and work to implement them to the best degree possible.

2. Dr. Burke, can you describe how your experiences on numerous NAS Committees and EPA science advisory councils, including the EPA Science Advisory Board, have prepared you to lead scientific research and development at EPA?

Response: I have worked closely with the agency as a member of the Science Advisory Board and member of the Board of Scientific Counselors. I have also served on the Board on Environmental Studies and Toxicology of the National Academy of Sciences and chaired a number of major Academy studies of EPA science. This experience has given me a strong understanding of the strengths and challenges of the EPA Office of Research and Development, and has provided me a valuable perspective of the views of a broad range of EPA stakeholders including business and industry, state health and regulatory agencies, academia, and community and environmental advocates.

Senator David Vitter

1. During the December 17, 2013, nominations hearing you committed to making data and information that underlies scientific studies used to justify EPA rulemakings available to the public. However, when it comes to most regulations under the Clean Air Act, the EPA has a practice of withholding underlying data, making it impossible for Congress and the public to fully understand the scientific underpinnings of major federal regulations. How will you reconcile EPA's current practice of withholding underlying data? How will you ensure that EPA's scientific work is objective and reproducible?

Response: Transparency and scientific integrity are very important to the agency's work. I understand that EPA has taken appropriate and substantial steps to increase transparency and public access to information. However, it is essential to protect the privacy of individuals who have served as subjects in studies and their personal health information. If confirmed, I intend to continue the agency's ongoing efforts to ensure that scientific and technical information that is intended to inform or support agency decisions continues to be based on the best available science.

2. Do you believe it is a conflict of interest for a researcher to receive funding from the EPA to conduct research, and then sit on exclusive panels for the agency making decisions based on the very same research?

Response: I believe it is important to have a balanced perspective in any review of research results and findings. Receiving funding from EPA should not disqualify outstanding scientists from participating in scientific panels however it is important to have strong and transparent measures to identify conflicts of interest. In my experience, science advisors may provide recommendations regarding scientific evidence but are not "decision makers" for the agency.

3. Isn't it correct that you and at least one of your close colleagues, Dr. Jonathan Samet, have received millions of dollars in research grants from the agency? If so, how many EPA research grants have you received? Please describe the scope of the research, which person and office at EPA authorized the grant, and the amount of the grant.

Response: Dr. Samet is a former colleague; he left Johns Hopkins in 2008 to take a position at the University of Southern California. Although we worked together on many academic activities, I was not a co-investigator in any of his EPA funded research.

The only major research grant I have received from EPA was a highly competitive Science to Achieve Results (STAR) grant in 2008 from the ORD National Center for Environmental Research entitled "Longitudinal Indicators of Policy Impact on Pollution, Exposure and Health Risk" The amount of the award was $499,961. I received funding from EPA Region 3 through a cooperative agreement in 1994 to address community environmental health concerns in South Philadelphia. The project was entitled "Pilot Multi-Media Environmental Health Characterization of South and Southwest Philadelphia" and the total funding was $519,000.

4. EPA research grants are supposed to be awarded in an unbiased and merit-based fashion. However, concerns have been raised that EPA summarily awards the same applicants the limited number of grants. Moreover, Dr. Burke, along with several of his colleagues at the Johns Hopkins University have received numerous EPA research grants. To ensure a competitive and neutral grant process, will you commit to acting without bias or favoritism in distributing EPA research grants?

Response: If confirmed, I will work to ensure that the research grant process is competitive and that the criteria for scoring the applications are clearly presented and transparent.

5. In recent years, the EPA Inspector General (IG) and the Government Accountability Office (GAO) reported instances where EPA grants have been awarded with no public notice, competition, or accountability. Will you commit to adopting all of the IG and GAO's recommendations regarding EPA's grant programs?

Response: I take seriously the role that the Inspector General and Government Accountability Office play in assessing the accountability of government programs, and if confirmed, I would welcome their recommendations. While I am not familiar with reports referenced in this question, if confirmed, I commit to reviewing the recommendations of the IG and GAO and giving them due consideration.

6. Francesca Grifo, former senior scientist and director at the Union of Concerned Scientists was recently appointed to serve as EPA's Scientific Integrity Officer within the Office of Research and Development. If confirmed, how do you intend to work with the Scientific Integrity Officer?

Response: As I mentioned in my opening statement, I have a deep respect for the work of the agency scientists and I believe science is the "backbone" of EPA decision-making, and has been the foundation of our nation's environmental progress over the past four decades. Science should be credible, transparent, and inclusive. If confirmed, I look forward to working with Dr. Grifo to see that the agency's Scientific Integrity Policy is fully implemented across the Office of Research and Development and EPA as a whole.

7. Are you familiar with Francesca Grifo, EPA's recently appointed Scientific Integrity Officer? Do you believe there is any reason to be concerned that Dr. Grifo's work at the Union of Concerned Scientists may affect her ability to carry out the responsibilities of the Scientific Integrity Officer?

Response: Although I do not know Dr. Grifo personally, I have reviewed her vitae and believe that her training and experience, including her work with the Union of Concerned Scientists, provide her with strong credentials to serve as Scientific Integrity Officer. If confirmed, I look forward to working with her to ensure the integrity of EPA science.

8. In promulgating National Ambient Air Quality Standards (NAAQS), EPA has repeatedly relied on studies that are based on individual cohort data collected in the early 1980s. In 2004, NAS cautioned against relying solely on these studies because of

the potential problems given that "cohorts were established decades ago, and some critical data items, including residence history, smoking rates, dietary factors, and other potential confounding and modifying factors, have not been updated." Do you agree with the NAS's caution against using studies that rely so heavily on outdated cohorts? Will you commit to reviewing this issue and reporting back to the Committee with specific guidance on how you intend to use such studies in setting standards and assessing risk?

Response: EPA's work to protect public health and the environment through programs such as promulgating National Ambient Air Quality Standards needs to be based on strong science. The NAAQS program is very important, and if confirmed, I look forward to reviewing this issue and working to ensure that the Integrated Science Assessments that provide the foundation for NAAQS decisions reflect the best possible science.

9. In the Office of Management and Budget's 2013 report on benefits and costs of federal regulations, over 80 percent of the claimed monetized benefits of all federal regulations were based on PM2.5 reductions. However, the report listed six major uncertainties, including a core uncertainty that PM2.5 may not cause the increased risk of mortality at lower concentrations.

a. Do you agree that these uncertainties are significant within the context of cost-benefit analysis?

b. Do you believe that EPA should address these uncertainties by developing integrated quantitative uncertainty analyses?

c. Will you commit to conducting this type of uncertainty analysis in the upcoming ozone NAAQS review?

Response: EPA's work to protect public health and the environment needs to be based on strong science. I look forward to reviewing this issue and working to ensure that the scientific foundation for EPA decisions reflect the best possible science.

10. OMB Circular A-4 requires key uncertainties to be disclosed and quantified to the extent possible to inform decision makers and the public about the effects and uncertainties of alternative regulatory actions. However, EPA has a practice of excluding and failing to quantify key uncertainties in the cost-benefit analysis of rulemakings. Will you commit to following all OMB circulars and guidelines? How will you ensure that key uncertainties are included and quantified in the cost-benefit analysis of EPA rulemakings?

Response: While I am not familiar with the specific requirements of that OMB circular and how it relates to the duties of ORD, if confirmed, I would certainly commit to follow all applicable OMB circulars and guidelines and to support the broader agency's efforts to comply with any such requirements. A big part of the ORD mission is to help provide information to fill key data and science gaps which can help to more fully characterize

uncertainty. If confirmed, I will work very hard to provide the agency with the tools and data necessary to deal with uncertainty in our regulatory analyses.

11. In FY2013, ORD received approximately $725 million in new appropriations and had $150 in unobligated balances. Yet, no one knows exactly how these funds are used or whether they are being used most efficiently to produce beneficial gains. In effect, EPA has no way of evaluating the environmental "bang for the buck" for each ORD research program. Will you commit to providing Congress an accounting on the costs and potential and actual beneficial gains of each ORO research program? If confirmed, how will you allocate spending in the Office of Research and Development?

Response: I am not familiar with the details of ORD's budget. If confirmed, I look forward to reviewing this issue to ensure that the resources are being utilized prudently and are focused on the priorities important to supporting the agency's mission.

12. The psychologist Brian Nosek and colleagues recently wrote: "Publishing norms emphasize novel, positive results. As such, disciplinary incentives encourage design, analysis, and reporting decisions that elicit positive results and ignore negative results." Therefore, it seems that there is less of an emphasis on replication of findings to ensure scientific integrity than developing novel findings.

a. Do you believe that there is publication bias that leads to greater publication rates of studies reporting positive results compared to studies showing no relationship?

Response: Yes, I agree that there is a bias toward greater publication of positive studies. There may be many factors that contribute to this, including a lower submission rate by investigators when study results are negative and the possibility that weaknesses in study design may contribute to a higher likelihood of negative results.

b. Considering the likelihood of a possible publication bias by journals and a possible bias toward funding positive results by federal agencies, how do you recommend EPA consider this bias in weighing positive and negative studies?

Response: EPA should consider all relevant well-conducted and peer-reviewed studies, regardless of whether they are positive or negative, and include clear criteria for inclusion and exclusion of studies. Review and assessment of studies should be based upon the quality of the research, including study objectives and design, statistical power, presentation of the findings and conclusions, and consideration of study limitations, uncertainty, bias and confounding.

13. The scientific integrity of EPA's hallmark IRIS program has been questioned by Congress as well as the National Academy of Sciences (NAS). While Dr. Ken Olden is working to bring new leadership to the program, there is much more work that needs to be done.

a. Can you commit to ensuring that all draft and final assessments released by the IRIS program are consistent with the recommendations of the NAS Formaldehyde committee which recommended changes for all IRIS assessments, not just formaldehyde?

Response: My understanding is that the IRIS Program has been implementing the recommendations using a phased approach, consistent with the advice of the National Research Council (NRC), making the most extensive changes to assessments that are in the earlier stages of assessment development. Additionally, in July 2013, EPA announced enhancements to the IRIS Program that will improve the science quality of assessments, improve the productivity of the Program, and increase transparency. These changes are consistent with the NRC recommendations. If confirmed, I look forward to working with the National Center for Environmental Assessment.

b. Science has advanced significantly over the last 25 years. Will you ensure that as part of the improvements in the IRIS program, the Agency will move away from outdated default assumptions and instead always start with an evaluation of the data and use modern knowledge of mode of action -- how chemicals cause toxicity - instead of defaults?

c. Do you agree that standard protocols should be developed to enable all studies to be independently judged based on their quality, strength, and relevance regardless of the author affiliation or funding source? If so, will you make development of these standard approaches a priority?

d. To further improve the IRIS Program, can you commit to revising the way hazard values are presented to the public to ensure that critical science policy choices are transparently presented and not comingled with scientific assumptions?

Response: EPA's work to protect public health and the environment needs to be based on strong science. I look forward to reviewing this issue and working to ensure that the scientific foundation for EPA decisions reflects the best possible science and that information is communicated in a transparent manner.

14. While health protection is often seen as the responsibility of EPA risk managers, when it comes to scientific assessments, the job of a risk assessor or toxicologist should be to produce assessments that are predictive of risks.

a. Do you agree that the role of the IRIS program is to identify values that are predictive of the potential health risks rather than those that provide the most conservative (lowest) value?

b. Will you support an approach to chemical assessment that results in hazard values that are predictive of actual health risk?

Response: IRIS assessments are designed to be scientific reports that provide information on a chemical's hazards and, when supported by available data, quantitative toxicity values for cancer and non-cancer health effects. EPA's work to protect public health and the environment needs to be based on strong science. I look forward to reviewing this issue and working to ensure that the scientific foundation for EPA decisions reflect the best possible science.

15. It is my understanding that internally the IRIS program no longer relies on definitions that are still publicly used (for example, the definition of the RfD and the meaning of confidence values in IRIS), yet EPA has never used any formal stakeholder or public or peer review process to implement these changes. Instead EPA seems to be relying on a 2002 review received from EPA's Risk Assessment Forum Technical Panel, and staff appear to pick and choose which suggestions they will follow and which they will not implement.

a. Will you commit to engaging stakeholders before changes to critical definitions and methodologies in the NAAQS and IRIS program are made?

Response: Yes, if confirmed, I will review the definition of the RfD and the confidence values.

16. Currently, when developing hazard values for exogenous exposures the IRIS Program does not consider natural environmental levels of chemicals, e.g., exposure to minerals from geologic formation, exposure to off-gassing from foliage, or levels naturally produced by the human body as part of its metabolic processes.

a. Do you agree that chemicals associated with the body's natural metabolic processes should be addressed specifically and separately in the development of a hazard value?

Response: This is an important consideration in understanding and managing incremental risk from environmental exposure. Since there are many natural products of metabolism that may have toxic effects if they are out of balance, the fact that they are naturally produced does not make them "safe" at all doses.

b. What is your position about addressing natural environmental chemical levels as distinct from background man-made emission?

Response: I believe that these are important considerations that should be presented as part of the problem formulation prior to undertaking a risk assessment. However, health based regulatory standards do not distinguish between natural occurring and man-made sources. Addressing incremental risks above background is an important consideration in risk management and the determination of "acceptable" risk in regulatory decision making. Reducing risks below background levels may not always be technically feasible.

c. Do you agree that IRIS hazard values should be able to pass a reality check and accommodate levels associated with existing natural exposures that are not known to be associated with any adverse effects at these low exposure levels?

Response: I cannot agree without more information about the specific pollutant of concern. The adverse effects of hazardous agents are not driven by whether or not they are "naturally" occurring. For example radon is known to increase risk of lung cancer. The source of the exposure does not impact the dose at which an adverse effect is observed. Natural occurrence and background levels are more appropriately considered in the risk management strategy.

17. There is a pressing need for priority setting when it comes to chemical evaluations within ORD and throughout EPA.

a. Can you commit to developing a clearly articulated prioritization process for high priority IRIS assessments that benefits from, and is responsive to, engagement from all stakeholders? Will you ensure coordination with other EPA program offices?

Response: I understand that EPA has previously committed to the Government Accountability Office that it will better describe for internal and external stakeholders and the public the nomination and selection process for chemicals for IRIS toxicity assessments, including the rationale for not selecting nominated chemicals for the full IRIS assessment. If confirmed, I look forward to working with scientists in the National Center for Environmental Assessment on this issue.

18. A 2011 GAO report recommended that EPA needed a more coordinated approach to managing its laboratories. In 2013 a National Academies (NAS) panel began reviewing EPA's laboratory capabilities. If the NAS study and EPA's own review substantiates that unnecessary and costly redundancy do indeed exist, do you commit to expeditiously undertake appropriate actions to consolidate or close labs, and reduce redundant staff?

Response: I understand that EPA has undertaken to do a study of the laboratory enterprise and has engaged the National Academies as part of this process. If confirmed, I will look into the progress of this effort.

a. Can you commit to developing a plan to undertake research in order to build the datasets necessary to establish scientific confidence for regulatory use of a tiered, risk-based approach for using high-throughput/high-content screening assays for safety evaluations (looking to approaches already developed such as the from the Hamner Institute)?

Response: EPA's computational toxicology research program is recognized nationally and internationally as bringing new science to bear on chemical safety and has made great progress in this area since the release of the NAS report.

19. Industry and federal research efforts have invested millions to better understand how chemicals interact with biological systems at human exposure levels in order to ensure development of human health risk assessment prediction models that are as accurate -and science-based as possible. However, IRIS has a long track record of dismissing these types of scientific biologically-based models and asserting that such approaches cannot prove the defaults are not warranted. Demanding that science proves a negative is an anti-scientific policy and indicates a deep seated prejudice against use of mode of action knowledge to replace defaults.

a. Why shouldn't EPA use the most up to date knowledge on mode of action and dose response at environmentally relevant exposures in lieu of outdated default approaches for hazard identification and dose response throughout the Agency, including in the IRIS Program?

Response: EPA's work to protect public health and the environment needs to be based on strong science. If confirmed, I will work with scientists within and outside of the agency to ensure that EPA's work reflects the best possible science.

b. Many scientists have criticized IRIS for its current framework and suggested using a weight of evidence framework. Thus, a litmus test for an improved IRIS will be adoption and use of a weight of evidence framework that incorporates all of the relevant and reliable data and knowledge of hypothesized modes of action, so that there is a clear and objective presentation of the extent to which existing data and knowledge do, or do not, support each hypothesis, including the default. Assuming you support such an approach, can you provide us with a timeline for when we might see such an approach adopted within IRIS?

Response: Hazard identification involves integrating evidence from human, animal, and mechanistic studies in order to draw conclusions about the hazards associated with exposure to a chemical. In general, IRIS assessments integrate evidence consistent with a framework developed by Sir Bradford Hill, which outlines aspects — such as consistency, strength, coherence, specificity, dose-response, temporality, and biological plausibility — for consideration of causality in epidemiologic investigations. These were later modified by others and extended to experimental studies. My understanding is that, currently, the National Center for Environmental Assessment uses existing guidelines that address these issues to inform assessments. If confirmed, I look forward to working with the National Center for Environmental Assessment on these issues.

20. In developing chemical assessments, such as those in IRIS, there is a blending of science, policy and science policy assumptions and choices throughout the evaluations.

a. Do you agree that IRIS assessments should explicitly acknowledge and transparently convey the science and assumptions around the science (i.e., handling uncertainty) inherent in IRIS assessments?

Response: Strong science and transparency are essential to the IRIS Program and important to all of EPA's work. If confirmed, I look forward to working with the National Center for Environmental Assessment on this issue.

21. In the 2009 NAS committee you chaired issued a report recommending there should be one unified approach for dose- response modeling. Unfortunately, such an approach may not always consider the millions of dollars of research that have been invested to explore the mechanisms of action of individual chemicals. Significant activities, coordinated by the Alliance for Risk Assessment, have been undertaken since 2009 to broaden the understanding of dose-response and to link different approaches to conducting dose response to problem formulation. This has resulting in more than 30 published case studies, illustrating qualitative categorization, quantitative screening and in-depth assessments.

a. Do you support linking dose response to problem formulation such that the complexity of the dose response approach is "fit for purpose" and reflects the range of decision options and likely regulatory impacts?

b. Do you believe that any approach implemented needs to put chemical specific information and test data ahead of standardize approaches?

c. Will you support an approach the puts chemical specific information and test data ahead of standardized approaches in the IRIS program?

Response: EPA's work to protect public health and the environment needs to be based on strong science. If confirmed, I will work with scientists within and outside of the agency to ensure that our work reflects the best possible science.

22. In the past you have suggested, in an NAS report you chaired, that information on nonchemical stressors should be incorporated into assessments and EPA should put further research dollars into evaluating the interactions between chemical and nonchemical stressors.

a. Considering the struggles ORD is having simply evaluating chemical stressors in the IRIS program, do you believe that ORD has the staff, with requisite qualifications and financial capacity, to also take on evaluations of nonchemical stressors?

b. Shouldn't ORD first convince Congress, NAS, and all other stakeholders that they can appropriately evaluate chemical stressors before broadening their scope?

Response: If confirmed, I look forward to further exploring this important issue with scientists within and outside of the agency.

23. As noted in "Science and Decisions: Advancing Risk Assessment" (NRC, 2009) "... formal consideration of numerous simultaneous chemical, physical, and psychosocial exposures with evaluation of background disease processes and other

dimensions of vulnerability could quickly become analytically intractable if the standard risk-assessment paradigm is followed, both because of the computational burden and because of the likelihood that important exposure and dose-response data will be missing. That points toward the need for simplification of risk- assessment tools in the spirit of iterative risk assessment..."

a. Since the NAS 2009 report there have been significant advances in the development and application of tiered, iterative tools for cumulative risk assessment, including development by the World Health Organization of a formal framework for risk assessment of combined exposure to multiple chemicals. Do you support use of this WHO framework? If not, why not?

Response: EPA's work to protect public health and the environment needs to be based on strong science. If confirmed, I will work with scientists within and outside of the agency to ensure that all of our work reflects the best possible science.

24. Currently the staff in the IRIS Program are the sole arbiters of determining whether and to what extent draft IRIS assessments should be revised to reflect input from peer reviewers and the public. EPA's own Scientific Advisory Board has recommended the use of a "monitor" or "editor."

a. Can you commit to ensuring that a 3rd party, independent of the IRIS Program, is tasked with ensuring that EPA staff have sufficiently considered and responded to peer reviewer and public input before assessments and other documents are finalized?

Response: Public comment and robust expert peer review is an important part of the agency's scientific work, and responding to public and peer review comments is an important step in completing a scientific product. It is my understanding that responses to public comments are documented in an appendix to each IRIS assessment so that interested parties can judge the adequacy of the response. If confirmed, I look forward to working with scientists in the agency to explore this issue further.

25. In previous comments on IRIS reform, you said that EPA's IRIS program is in "crisis" and is in need of reform while further stating "the sleeping giant is that EPA science is on the rocks ... if you fail, you become irrelevant, and that is kind of a crisis." Further, you admonished, "You can't fail at this time."

In response to a question you said, "We owe it to the American public, we owe it to the scientific community... to have risk assessments based in sound science. It would be better to do it right than destroy the credibility of the process."

The NAS report on formaldehyde was critical of the process as well as the underlying science that EPA used in its draft assessment. Your October 2011 testimony emphasized not only the importance of the process but, more importantly, the scientific conclusions or scientific content of the IRIS assessments.

a. Given the significance of this risk assessment to the scientific process and for restoring the public confidence in EPA's science, it is imperative that you commit to having the NAS retook at the next iteration of the formaldehyde IRIS assessment. Can I have your assurance that this peer review will take place?

Response: If confirmed, I will work to implement the recommendations of the NAS Formaldehyde Committee, not only for formaldehyde but for all IRIS documents. While I can assure there will be rigorous peer review of the revised formaldehyde document, I believe it is premature for me to provide assurance that another NAS committee will be convened specifically to re-review formaldehyde. I do look forward to working closely with the NAS to continually improve the quality of EPA science.

26. EPA, at the urging of stakeholders, will convene a scientific workshop on formaldehyde in the first half of 2014. Three key issues have been identified for discussion. I am concerned that this workshop will be similar to typical EPA science workshops of the past where the agency solicits input from a variety of stakeholders, irrespective of their qualifications, listens politely and without comment' and provides no resolution or feedback. Quite frankly, that is a waste of time and resources. I want to see difference in interpretation of the data, particularly from the epidemiological studies, narrowed. It is my hope that a robust dialog will help accomplish that. EPA staff should be engaged participants in the dialog, not mute listeners and I suggest EPA engage a professional facilitator and have the proceedings of the workshop published. Will you commit to be personally involved in the development and conduct of this workshop and ensure that the right scientists with the relevant subject matter expertise are at the table?

Response: Workshops to address important scientific issues, such as those related to assessing the health risks of formaldehyde, can help the agency in conducting its work. If confirmed, I look forward to working with the National Center for Environmental Assessment to ensure that this workshop is successful and includes experts with the appropriate background and knowledge.

27. The EPA workshop is timely, important at both the scientific and policy levels, and deals with scientific challenges of the highest order. How will you assure EPA integrates high quality information to help inform regulatory decisions for formaldehyde that presents complex challenges? How will EPA conduct a thorough, state-of-the-art WOE evaluation of the entire database?

Response: EPA's work to protect public health and the environment needs to be based on strong science. If confirmed, I will work with scientists within and outside of the agency to ensure that all of our work reflects the best possible science.

28. If you are confirmed, what commitment will you make to ensure EPA's scientific content and scientific conclusions are sound in light of the series of significant scientific shortcomings that the NAS Formaldehyde report identifies and the subsequent recommendations put forward?

Response: EPA has initiated a number of changes in response to the NAS Formaldehyde report. At the present time there is an NAS panel examining the overall IRIS process. If confirmed, I look forward to receiving the findings of the NAS and taking any necessary steps to address shortcomings and continually evaluate and improve the process.

29. As you know, Congress directed EPA to contract with the NAS to review the cancer and non- cancer IRIS assessments of inorganic arsenic. It is our understanding that a senior scientist in the IRIS program stated publically in a meeting that any recommendations from the NAS would be unlikely to change the agency's views on the arsenic IRIS assessment If confirmed, are you prepared to effect organizational and staffing changes to ensure that scientific integrity characterized by objectivity, transparency and scientific rigor is restored?

Response: I am not aware of any specific details relating to this purported statement by the senior scientist. As an active participant in NAS activities and Chair of multiple studies, I have tremendous respect for the work of the Academy. I can assure you that, if confirmed, I look forward to meeting with the NAS committee and working to implement recommendations they may provide to improve the IRIS assessment for both cancer and non-cancer effects of inorganic arsenic. I will also devote myself to ensuring integrity of all IRIS assessments and working with the staff to continually improve quality, objectivity, and transparency.

30. What are your views on how best to use systematic review as a tool to identify and review the body of scientific literature pertinent to a risk assessment of a chemical or substance? It is our understanding that the systematic review method developed by Dr. Birnbaum at the NTP and planned to be used by EPA IRIS automatically codes studies in the literature funded by industry as biased. That would mean that industry studies would not be given the same weight as other studies possibly funded by other organizations. How do you view this practice? How can you justify automatically ascribing bias to studies from or funded by industry, ignoring their scientific merit? Couldn't this distort the science by leaving out reliable and sound scientific studies?

Response: Systematic review of epidemiologic studies provides a valuable way to consider the findings from multiple investigations in evaluating the evidence for adverse effects. The review process also provides a framework for selection of studies for inclusion. The consideration of studies should be driven by the quality of the science. The systematic review process can address potential questions about investigator bias can still include studies that may be funded by industry. In risk assessment the systematic review process should be as robust as possible, with clear and transparent criteria for inclusion and exclusion of studies. Funding source alone should not be the basis for the decision to exclude a study from consideration. A full examination of study quality and potential bias is essential.

a. Others have pointed to different sources of bias, such as publication bias, which creates incentives, including increased likelihood of funding, toward studies that report positive associations; what are your views on this and similar concerns and how do you plan to take these kinds of bias into account?

Response: The issue of publication bias can be challenging. It is recognized that positive studies are more likely than negative studies to be published in peer reviewed journals. There may be many reasons contributing to this trend, including investigator choice not to submit negative studies and other design considerations that may contribute to the failure of a study to achieve statistically significant positive results. As a peer reviewer for many journals, I have never recommended rejection of a paper solely because of a negative result. Nor am I aware of any editors or editorial guidelines that recommend rejection of epidemiology studies with negative results. However, recognizing there may be a publication bias I believe it is very important that the systematic review process cast a broad net to be as inclusive as possible and include well conducted studies with both positive and negative findings.

31. The recent NAS interim report on inorganic arsenic states, "EPA proposes to use linear low-dose extrapolation as the default for cancer and non-cancer effects." This is in contrast with the EPA cancer guidelines, which supports the use of mode-of-action to determine the shape of the dose- effect relationship. It is also in contrast with general mechanistic understanding of non-cancer dose-response relationships. What are your views on linear versus non-linear approaches to risk assessment? Do you think EPA should pursue the establishment of a threshold at low exposures if the data support such association?

Response: Understanding the impact of chemical exposures at extremely low doses is perhaps the most challenging issue in risk assessment. Unfortunately, for the large majority of chemicals there is currently limited information about mode of action and great uncertainty about the dose-response relationship. For carcinogens, the default continues to be linear extrapolation at low doses. For non-carcinogens the dominant default has been to assume the existence of a threshold and use a safety factor approach in the face of limited information. The "Silver Book" provides guidance on addressing the issues of thresholds and urges that EPA develop tools to quantify non-cancer risks. Establishing a population threshold is very challenging, particularly when considering the most vulnerable members of our population such as developing infants or the elderly. If there is strong data supporting a threshold it should be presented as part of the risk assessment. In general, risk assessments should present the fullest characterization of risks possible, presenting both cancer and non-cancer findings, and providing risk managers with both linear and non-linear model results where there is sufficient data.

32. As an epidemiologist, please describe how you think the body of epidemiology on a specific substance should be reviewed. For instance, many observers, including the NAS, have criticized EPA for giving too much weight to epidemiological studies of large populations exposed to inorganic arsenic, such as the Taiwan data, just because of the large number of subjects, while giving little credence to studies from the US that observe smaller populations, although the lifestyles, including nutrition, of the large populations are totally different from US lifestyle. Meta-analysis studies have been conducted of US populations that address the smaller number of study subjects, but EPA has ignored those studies. These meta-analyses provide evidence that the dose-response relationship used by NRC 200 I from Taiwan is not consistent with findings from the US, and is higher than what would be derived from studies of US populations. What is your view on

the use of meta-analyses as a way to integrate information from smaller studies and to provide a reality check on EPA risk calculations?

Response: Within the field of epidemiology there is currently a great emphasis on improving the methods and application of meta-analysis and systematic review. This was in part stimulated by the recommendations of the NAS Formaldehyde report. The current process for review and refinement of the IRIS arsenic document will be addressing the challenge of improving the presentation and consideration of epidemiological findings. I am optimistic that an improved process will be more inclusive of smaller studies and provide a more transparent scientific basis for the selection of the critical studies used to calculate risks.

33. Studies from places like Bangladesh and Taiwan involve populations with very different nutritional statuses than is found in the US. The NAS Interim Report notes the importance of taking account of these differences in applying these study findings to the US (at p.59). How would you extrapolate from those studies to make the data relevant to the US?

Response: I agree that cultural, nutritional, and exposure difference should be considered in assessing and managing risks to the U.S. population. If confirmed a look forward to examining the recommendations of the NAS committee and actively working with the IRIS program to address the questions regarding relevance to the U.S. population.

34. How do you view the intersection between epidemiology and toxicology? Many critics believe EPA has been overly reliant on epidemiology and deemphasized mechanistic research that provides guidance for dose-response calculations. Some EPA critics suggest that a reluctance to identify modes of action is a deliberate approach by EPA to allow it to use epidemiological data to validate their modeling.

a. What steps can you take to correct this bias, whether real or perceived?

Response: Toxicology and epidemiology are both essential if we are to understand and manage risks. Both types of studies have advantages and limitations, and the best approach is to improve how we consider the full body of evidence from both of these disciplines. While well conducted studies of human populations are considered the "gold standard" for assessing human health risks, toxicology provides important information when human studies are lacking or not possible. The large majority of IRIS risk assessments are based upon animal toxicology, including assessments of cancer risk, because the dose response data from most human studies is very limited.

I do not believe there is a bias against toxicology studies. If confirmed, I will work with risk assessors and other scientists to provide clear criteria for consideration of epidemiology and toxicology in the risk characterization process. I will also support continued research to improve the application of mechanistic data to risk assessment.

b. Science commentators have noted a concern about "normative science," which is defined as "information that is developed, presented or interpreted based on an

assumed, usually unstated, preference for a particular policy choice." [Lackey, Robert T. Normative Science. *Terra Magazine,* Oregon State University, Volume 8, Issue 2 (2013).] What steps will you take to ensure that EPA's science assessments on your watch do not include this kind of normative science?

Response: I do not believe that "normative science" is practiced at EPA, and the best approach to this concern is open and credible peer review throughout the scientific process. It also it is important to separate the scientific assessment of evidence from the ultimate policy decision that must consider other social and economic factors.

c. Another type of concern has been identified: "EPA's use of assumptions that it claims are 'public health protective,' which err on the side of overstating risk when data are lacking.... Such inflated risk estimates can lead to overly stringent regulations and can scramble agency Priorities because the degree of precaution differs across chemicals. How do you intend to guard against this problem? What are your views on the use of empirical data as a "reality check" on overly conservative risk assessments, particularly those resulting from modeling or extrapolation of data? How do you view the application of additional safety factors - particularly when they become cumulative- for sensitive subpopulations or policy considerations such as environmental justice?

Response: First, I believe that the fundamental mission of EPA is to protect public health, and therefore agree with approaches that are "public health protective". I also believe that the fundamental challenge in assessing chemical risks is a lack of data. Therefore, it is not really valid to say that the EPA assumptions "overstate the risks when data are lacking". For example, in the absence of data about a specific unrecognized health effect it may be the case that risks are underestimated. The current drinking water emergency in West Virginia is an example of the challenge of safeguarding public health when the data about health effects is limited. In the absence of data, safety factors provide a time tested public health strategy to safeguard communities.

I agree that more specific evidenced based approaches to safety factors and the protection of vulnerable subpopulations are needed. Also, risk characterization should include presentation of multiple modeling approaches to assist decision making and provide a "reality check" based on empirical data. Cumulative risk presents a difficult challenge. I support continued research to refine our methods of considering interaction of multiple stressors in risk assessment, particularly regarding sensitive populations and environmental health disparities.

35. The NAS 2008 Report: <u>Science and Decisions: Advancing Risk Assessment,</u> frequently referred to as the "Silver Book" strongly recommended that EPA should consider the regulatory impacts of its IRIS hazard assessments. Since then, EPA has proposed IRIS assessments, including the cancer assessment for inorganic arsenic, which would drive regulatory standards below naturally occurring background levels in soil and water. EPA national and regional managers were highly critical of the IRIS proposed 17x increase in the cancer slope for inorganic arsenic, saying the science was " detached from reality" and would have "disastrous consequences" for EPA programs including Safe Drinking Water and RCRA.

The NAS Silver Book urges EPA to perform extensive examination of risk management implications and options in the first phase of human health hazard assessments. It further recommends involving EPA national program managers (Air, Water, CERCLA, RCRA) in this early phase of assessment so that EPA can then use risk assessment to make more informed choices among those options.

Do you support this particular recommendation from the NAS Silver Book? Do you believe EPA's IRIS assessments must properly consider the "real world" regulatory and risk management implications of its hazard assessments?

Response: As Chair of the NAS Committee, I strongly support the recommendations of the "Silver Book". It is important that risk assessment be designed to address the needs of decision makers and risk managers. However, the risk management process should be recognized as distinct from the characterization of health risks. The ultimate decision on the application of risk information for risk management is a policy decision. Issues of feasibility and cost are essential components of the decision process and are not driven by dose response findings. The risk management decision must consider the "real world". The full process presented in the Silver Book is a continuum from problem formulation through risk management.

36. What is the cost of EPA's Hydraulic Fracturing study on the potential impacts of hydraulic fracturing on drinking water resources thus far? How long has the agency been engaged in the study? What has the agency done in terms of testing?

Response: To my knowledge, the work began in 2010 in response to a request from Congress. If confirmed, I will look into the budget of the EPA's study as well as the specific research projects.

37. Has the EPA done any testing in real time for sites that are being drilled now? My understanding is that the agency has tested several sites that were drilled years ago, which is a problem because EPA does not have a good baseline of information and there are other factors which could have caused contamination (agriculture, mining, etc.). How does EPA plan on overcoming the lack of good baseline information and ensuring no conclusions are drawn about hydraulic fracturing without first ruling out any other possible sources of contamination?

Response: Although I participated in a 2011 EPA SAB review of the study, I am not familiar with the specific details of EPA's sampling work, the availability of baseline information, or how the agency will use this information to draw conclusions about potential sources of contamination. If confirmed, I look forward to working with scientists in the agency to explore this issue further.

38. Has the agency has expanded the scope of the study beyond looking at groundwater? What is the full scope of what the agency is now studying? What are all the various pieces that will be included in the study? Were those asked for by Congress? If the study has been expanded, what justification does the agency have for doing so?

Response: I am not familiar with the specific details of the study including the scope, as it may have changed from the Study Plan that I commented on in 2011. If confirmed, I will support a scope that is responsive to Congress' request.

39. What has been the extent of EPA's work with DOE and USGS to date on the study?

Response: If confirmed, I look forward to gaining an understanding of how EPA has worked with other agencies to ensure that research efforts are done efficiently and effectively. However, at this time I do not know the extent to which EPA is working with other federal agencies on the hydraulic fracturing study.

40. How are you accounting for fracturing technology, as it is changing quickly and beneficially, as part of the study?

Response: I am not familiar with EPA's approach for staying up to date on changes in industrial practices related to hydraulic fracturing. If confirmed, I look forward to working with scientists in the agency to ensure that this study is based on the best available science.

41. There has been some controversy over methane leakage from shale development and hydraulic fracturing. But a recent study from the University of Texas that was published in the Proceedings of the National Academy of Sciences found that methane leaks from natural gas development were in line with EPA's data, which showed a leakage rate of only about 1.5 percent. There are several other studies, some of which found high leakage rates, but most seem to suggest that leakage is low and manageable. Based on your review of the scientific literature, what's your understanding of methane leakage from natural gas development, and do you see any environmental benefits of increasing natural gas production and use in the United States?

Response: I have not reviewed the National Academy of Sciences paper and cannot speak to the issue of methane leakage at this time. If confirmed, I will look into this issue.

42. Former EPA administrator Lisa Jackson said, 'I'm not aware of any proven case where the fracking process itself has affected water.' Secretary of Energy Ernest Moniz has said 'I still have not seen any evidence of fracking per se contaminating groundwater.' Interior Secretary Sally Jewell said she is 'not aware of documented cases' of hydraulic fracturing contaminating groundwater. I realize the EPA is currently studying this issue, but based on the evidence already available, do you agree with these officials' assessments?"

Response: I am not familiar with the details of the scientific literature, but will look into the issue if I am confirmed.

43. The increase in domestic energy production is due to the application of two proven engineering technologies- hydraulic fracturing and horizontal drilling. Hydraulic

fracturing has been used commercially since the 1940s and directional drilling has been around since the 1930s. Development of resources using these technologies is responsible for 2.1 million American jobs and this number is expected to rise to 3.9 million in 2025. Furthermore, tens of thousands of wells are drilled every year using the process, and we have seen over a million wells drilled in the US with no cases of groundwater contamination. Do you agree that hydraulic fracturing is critical to our economy and our national security? Do you agree that it is a proven technology that has been used safely for over half a century and can be used safely?

a. Are you aware of any cases where hydraulic fracturing has contaminated drinking water?

Response: Energy production is critical to our economy and our national security and hydraulic fracturing should be done in a manner that protects human health and the environment. At this time, I cannot speak to the level of safety associated with hydraulic fracturing, as it has not been my professional focus to date. However, if confirmed, I am committed to ensuring that EPA has all of the information available about the safety of the technology. As I mentioned during my hearing last month, from my own experience, having done many studies of groundwater contamination, I am not familiar with a specific case of drinking water contamination from hydraulic fracturing.

44. As part of the Congressionally-requested study on the relationship between hydraulic fracturing and drinking water, the conference report stated that "the study [shall] be conducted through a transparent, peer-reviewed process that will ensure the validity and accuracy of the data." The EPA Science Advisory Board (SAB) has set up an ad hoc panel specifically to provide the peer review for the study and its components.

a. Will the SAB ad hoc panel peer review all of the reports and projects that are developed as part of the study? Do you believe it is the SAB ad hoc panel's role to peer review all of the study's reports and projects as part of the study?

Response: I believe that rigorous peer review is an important element to ensure the quality of the science. I am not familiar with the details of ORD's peer review plan for the study. If confirmed, I will look into this issue and support decisions that ensure valid and accurate data as well as transparency.

45. Also included in the conference report is the statement that "The Agency shall consult with other Federal agencies as well as appropriate State and Interstate regulatory agencies in carrying out the study..."

a. Are you aware of any other federal agencies currently being consulted in the study? Which agencies will you consult with should you be confirmed and head the ORD and lead the study?

Response: I am not familiar with the extent to which EPA is working with other federal agencies. If confirmed, I look forward to learning about how EPA has worked with other agencies to ensure that research efforts are done efficiently and effectively.

46. Recently, EPA Administrator Gina McCarthy was quoted as saying that "developing some kind of uniform standard [as it relates to water] is very difficult given different geologies and different uses of water, different aquifers."

a. Do you agree with that statement?

Response: I am not familiar with the Administrator's statement. If confirmed, I will look forward to learning more about the issue.

47. This June, ORD announced it would abandon its flawed drinking water investigation in Pavillion, WY and would instead support a further investigation by the State of Wyoming.

a. Given the flawed science on display by the agency in Pavillion and ORD's withdrawal, will you exclude the agency's work and data prior to June 2013 from the agency's Congressionally-requested study on the relationship between hydraulic fracturing and drinking water? If not, why not?

Response: I am not familiar with the specific details of ORD's support of the Agency's Pavillion investigation. If confirmed, I look forward to learning about EPA's work in this area.

b. ORD abandoned its investigation, yet according to agency statements, continues to "stand behind its work and data." How can the agency reconcile these directly contradictory actions? How would you explain to the American people that continuing a flawed investigation is not worth taxpayer resources, yet the agency "stands behind" the work and data that it abandoned? If confirmed, will you correct the record and explain to the public that EPA does not stand behind flawed science?

Response: I am not familiar with the specific details of the agency's Pavillion investigation. If confirmed, I will look into this issue.

c. Are you aware of criticisms of EPA's work in Pavillion by other federal agencies? How would you respond to those criticisms?

Response: I am not aware of any specific criticisms from any agency.

d. How are ORD and the EPA regional office in Denver currently supporting the State of Wyoming's investigation?

Response: I am not aware of any specific details of the investigation.

48. Is there a reason, particularly as it relates to air science impacts (PM, ozone, etc.) that we don't see the agency using nonlinear threshold analysis? There are concerns that EPA's analysis is allowing the agency to count benefits that just don't exist, or otherwise set standards below naturally occurring background levels. We've seen this in chemical assessments as well, such as on dioxin and inorganic arsenic. How do we resolve the distance between theoretical benefits and empirical evidence?

Response: EPA's work to protect public health and the environment needs to be based on strong science. If confirmed, I will work with scientists within and outside of the agency to ensure that all of our work reflects the best possible science.

49. One of the most important responsibilities of the EPA Office of Research and Development is the development of health assessments for EPA's IRIS program. In September 2011, EPA issued its long-awaited "Toxicological Review of Trichloroethylene (CAS No. 79-01-6) in Support of Summary Information on the Integrated Risk Information System (IRIS)."

The IRIS Assessment contains a reference concentration ("RfC") of 0.0004 ppm (0.4 ppb or 2 J.Lg/m3) and a reference dose ("RfD") of 0.0005 mglkg/day for trichloroethylene (TCE). These are values that are considered by EPA to be protective for all noncancer critical effects. EPA's derivation of the RfC/RfD for TCE is based, in part, on Johnson *eta/.,* Threshold of Trichloroethylene Contamination in Maternal Drinking Waters Affecting Fetal Heart Development in the Rat, Environmental Health Perspectives 111: 289-92 (March 2003).

The RfC/RfD is within the range of background concentrations of TCE in urban air. There is a significant ongoing dispute among the EPA regions as to whether and how this RfC/RfD derived from Johnson *et al*.should be the basis for a short-term TCE exposure limit at Superfund sites. Thus, the proper interpretation and use of this non-GLP study in risk assessment is a question of the highest priority to EPA's Superfund program.

As noted in the peer review of a recent EPA "TSCA Chemicals Work Plan" assessment of TCE which was highly critical of EPA's reliance on Johnson *et al/.,* "[o]ne of the fundamental tenants in science is the reliability and reproducibility of results of scientific investigations."

The peer reviewers noted:

- **At least two GLP-compliant studies conducted under both EPA and OECD guidelines have been unable to reproduce the effect seen by Johnson *et al.,* despite the participation in one of the studies by Johnson herself.**

- **The dose-response relationship reported in Johnson *et al.* for doses spanning an extreme range of experimental dose levels is considered by many to be improbable, and has not been replicated by any other laboratory.**

- **The congenital heart defect incidence in control animals in Johnson *et al.* was 86 times the historical control incidence in Charles River rats.**

- **As California EPA noted in declining to rely upon Johnson *et* al, "These results are also not consistent with earlier developmental and reproductive toxicological studies done outside this lab in mice, rats, and rabbits. The other studies did not find adverse effects on fertility or embryonic development, aside from those associated with maternal toxicity (Hardin et al.,2004)."**

Is EPA concerned that the TCE IRIS Assessment appears to rely on an irreproducible study result? Is there any effort underway to correct this Assessment? Does this information presented seem to indicate that the EPA's IRIS program is no longer "crisis" and is being based on the best available science?

Response: I am not aware of any EPA effort to review the IRIS assessment for TCE. EPA's work to protect public health and the environment needs to be based on strong science. If confirmed, I will work with scientists within and outside of the agency to ensure that our work reflects the best possible science.

Senator James Inhofe

1. Dr. Burke, as head of the EPA's R&D Office, you are going to have responsibility for the Congressionally-requested study on the relationship between hydraulic fracturing and drinking water. The conference report mandating the study state that "the study [shall] be conducted through a transparent, peer-reviewed process that will ensure the validity and accuracy of the data." The EPA Science Advisory Board (SAB) has set up an ad hoc panel specifically to provide the peer review for the study and its components.

Will the SAB ad hoc panel peer review all of the reports and projects that are developed as part of the study?

Response: I am not familiar with the details of ORD's peer review plan for the study. If confirmed, I will look into this issue and support decisions that ensure valid and accurate data as well as transparency.

2. Dr. Burke, a few weeks ago the EPA Administrator was quoted saying that "developing some kind of uniform standard [as it relates to water] is very difficult given different geologies and different uses of water, different aquifiers."

Do you agree with this statement?

Response: I am not familiar with the Administrator's statement. If confirmed, I will look forward to learning more about the issue.

3. Dr. Burke, you have served as a member of EPA's Science Advisory Board. The SAB serves an important function especially in regard to providing advice on EPA's study on hydraulic fracturing and drinking water.

a. In your capacity on the SAB, did you have an opportunity to review EPA's study plan?

Response: As a member of the Charter Board of the Science Advisory Board, I did review the study plan. I submitted written comments on July 5, 2011. These comments are part of the public record and are available on the SAB website. The comments were generally supportive of the study plan and included suggestions for reaching out to local health officials and improving the evaluation of potential health risks to communities.

b. Do you agree that all of the individual components of the study should be deemed highly influential scientific assessments?

Response: I am not familiar with the EPA practices regarding defining a study as a highly influential scientific assessment. If confirmed I look forward to working with the scientific staff and learning more about these designations and their impact on the peer review process.

Senator BOXER. Thank you very much.

Last but certainly not least, we turn to Ms. Wassmer.

STATEMENT OF VICTORIA BAECHER WASSMER, NOMINATED TO BE CHIEF FINANCIAL OFFICER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. WASSMER. Good afternoon, Chairman Boxer, Ranking Member Vitter and other members of the Committee.

It is my honor to appear today before you as President Obama's nominee as the Chief Financial Officer for the Environmental Protection Agency. If confirmed, I will work every day to be worthy of this privilege by serving the President and Administrator McCarthy with dedication and commitment.

Before I begin, I would like to take a moment to thank my parents, Frank and Viola Baecher, my parents. My mom, who is actually here just behind me, grounded me in the spirit of public service. After attending the University of Chicago, Graduate School of Social Work, they served as clinical social workers in the Chicago area public school system. It was through their example over decades of dedicated service that I learned the importance of giving back, being accountable and working with purpose to make things better.

Over my 20-year career, I have spent 15 years in service to the Federal Government. By building on my technical training with hands-on, practical leadership and management experience, I have had the opportunity to take on progressively challenging and invigorating jobs.

After completing graduate school in public policy at the Kennedy School of Government, I spent 6 years at the Office of Management and Budget. I first served as a policy analyst in the Office of Information and Regulatory Affairs before becoming a program examiner in the Transportation Branch, overseeing management, regulatory policy and budgetary issues over an array of agencies. I learned from master senior executives and policy officials the importance of being a dedicated, responsible steward of the American taxpayers' money.

After several years spent at the local transit agency and in the private sector, the pull of Federal service brought me back. I joined the Federal Aviation Administration as a manager and later Deputy Director in the Office of Budget.

I then went on to become a member of the Senior Executive Service and the Deputy Chief Financial Officer, managing the $16 billion annual budget that allows the FAA to provide its mission of being the safest, most efficient aerospace system in the world, and being responsible for such a large complex budget for such a high profile agency allowed me to apply strategic, data-driven approaches to implementing sound business practices that ensured performance and accountability.

In 2010, I became the Chief Financial Officer and Vice President of Administration at the Millennium Challenge Corporation. MCC was still maturing from a startup international development agency and to a results-driven, transparent and innovative organization. I was responsible for realigning corporate services, including

finance, human resources, acquisitions and information technology to better support the agency's mission.

I also implemented tighter internal controls and improved financial practices which allowed for scarce budgetary resources to go further in supporting poor, lower and middle income countries that were well governed.

In August 2011, I was asked to return to the FAA to create a new organization for an agency that had made significant investments in me as a senior leader. As the Assistant Administrator for Finance and Management, I have overseen the transformation of the agency's finance, acquisition, information technology and regions and center operations services into a single, integrated, shared services model.

After 2 years, I can proudly say that we have moved from a new standup organization to a high performing, value added operation. When constrained fiscal times necessitated improved efficiencies and cost savings, my team and I navigated the agency's unprecedented budget cuts. Our data driven approaches helped the agency identify approximately $637 million in budget reductions, of which over half, $320 million, were through contract spending, travel and other non-pay cuts.

I was asked recently what my definition of success is. Throughout my career, success has meant working on a trajectory of improving things systematically, making change and getting results when even after I have left, things are still moving forward.

If confirmed to serve as the CFO, I will work just as hard and with as much commitment using my full talent and experience in support of the EPA's mission to protect human health and the environment.

Thank you again. I welcome any questions you may have.

[The prepared statement of Ms. Wassmer follows:]

STATEMENT OF VICTORIA BAECHER WASSMER

NOMINEE FOR THE CHIEF FINANCIAL OFFICER

ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

DECEMBER 17, 2013

Good Afternoon Chairman Boxer, Ranking Member Vitter and other members of the Committee.

It is my honor to appear today before you as President Obama's nominee as the Chief Financial Officer for the Environmental Protection Agency. If confirmed, I will work every day to be worthy of this privilege by serving the President and Administrator McCarthy with dedication and commitment.

Before I begin, I'd like to take a moment to thank my parents, Frank Baecher and Viola Reed Baecher, who grounded me in the spirit of public service. After attending the University of Chicago Graduate School of Social Work, they served as clinical social workers in Chicago area public school systems before retiring recently. It was through their example, over decades of dedicated service, that I learned the importance of giving back, being accountable, and working with purpose to make things better.

Over my 20-year career, I have spent 15 of those years in public service to the federal government. By building on my technical training with hands-on, practical leadership and management experience, I have had the opportunity to take on progressively challenging and invigorating jobs. After completing graduate studies in public policy at the Kennedy School of Government, I spent 6 years at the Office of Management and Budget. I first served as a policy analyst in the Office of Information and Regulatory Affairs before becoming a program examiner in the Transportation Branch, overseeing management, regulatory, policy and budgetary issues over an array of agencies. I learned from master senior executives and policy officials the importance of being a dedicated, responsible steward of the American taxpayers' resources.

After several years spent at the local transit agency – the Washington Metro – and in the private sector, the pull of federal service brought me back. I joined the Federal Aviation Administration (FAA) as a manager and later Deputy Director in the Office of Budget. I went on to become a member of the Senior Executive Service and the Deputy Chief Financial Officer, managing the $16 billion annual budget that allows the FAA to achieve

its mission of providing the safest, most efficient aerospace system in the world. Being responsible for such a large, complex budget for such a high-profile agency allowed me to apply a strategic, data-driven approach to implementing sound business practices that ensured performance and accountability.

In 2010, I became the Chief Financial Officer and Vice President of Administration and Finance at the Millennium Challenge Corporation (MCC). MCC, founded in 2004, was still maturing from a start-up international development agency into a results-driven, transparent, and innovative organization. I was responsible for realigning corporate services, including finance, human resources, acquisitions and information technology, to better support the agency's mission. I also implemented tighter internal controls and improved financial practices, which allowed for scarce budgetary resources to go further in supporting poor and lower-middle income countries that met criteria for being well governed.

In August 2011, I was asked to return to the FAA to create a new organization for the agency that had made significant investments in me as a senior leader. As the Assistant Administrator for the Office of Finance and Management, I have overseen the transition of the agency's finance, acquisition, information technology, and region and center operations services into a single, integrated shared services model. After two years, I can proudly say we have moved from a new stand-up organization to a high performing, value-added operation. When constrained fiscal times necessitated improved efficiency and cost savings, my team and I navigated the agency's unprecedented budget cuts. Our data-driven strategies helped the FAA identify approximately $637 million in FY 13 budget reductions, of which approximately $320 million were through contract spending, travel and other non-pay reductions.

I was asked recently what my definition of success is. Throughout my career, success has meant working on a trajectory of improving something systematically, making change and getting results – where even after I have left, things are still moving forward. If confirmed to serve as the CFO, I will work just as hard and with as much commitment, using my full talents and experience in support of the EPA's mission to protect human health and the environment.

Thank you, and I welcome any questions you may have.

Questions for the Record
December 17, 2013 Hearing on the Nomination of
Victoria Baecher Wassmer
to be Chief Financial Officer of the
U.S. Environmental Protection Agency
Committee on Environment and Public Works
United States Senate

Senator Boxer

1. **Ms. Wassmer, can you describe how your background and experiences at the FAA and earlier at OMB have prepared you to be the Chief Financial Officer at EPA?**

   Response: I would bring to the role of Chief Financial Officer (CFO) of the Environmental Protection Agency (EPA) 20 years of proven professional experience in progressively high-profile positions, including 15 years of hands-on, practical financial management and leadership within the Federal government. My service to the Federal Aviation Administration (FAA), the Millennium Challenge Corporation, and Office of Management and Budget (OMB) has prepared me for this complex, invigorating opportunity by allowing me to learn firsthand the critical importance and practice of being a responsible, vigilant steward of the American taxpayers' dollars.

   Specifically, in regards to my experience at OMB and FAA, after completing graduate studies in public policy at the Kennedy School of Government, I spent six years at OMB. I gained experience as a policy analyst in the Office of Information and Regulatory Affairs before becoming a program examiner in the Transportation Branch. In these roles, I was responsible for overseeing management, regulatory, policy and budgetary issues over an array of agencies. I later joined the FAA as a manager and then Deputy Director in the Office of Budget. I went on to become a member of the Senior Executive Service and was named the Deputy CFO, responsible for managing the $16 billion annual budget that allows the FAA to achieve its mission of providing the safest, most efficient aerospace system in the world.

   In August 2011, I returned to the FAA as the Assistant Administrator for the Office of Finance and Management. Since then, I have overseen the transition of the agency's finance, acquisition, information technology, and region and center operations services into a single, integrated shared services model. I have also spearheaded agency reforms that ensure resources are properly managed and better optimized to drive cost reductions and financial accountability. Through our centralized approach for common financial services, my team and I have identified value-added financial strategies and performance measures that have realized cost savings, increased efficiency, and reduced duplication in order to better support our customers and the FAA mission. Our data-driven strategies helped the FAA identify approximately $637 million in FY 2013 budget reductions alone, of which approximately $320 million were through contract spending, travel, and other non-pay reductions. During my tenure, we also led the agency in achieving the Certificate of Excellence in

Accountability Reporting (CEAR) Award for the FAA's FYs 2011 and 2012 Performance and Accountability Report (PAR), marking the eighth and ninth time the agency has received this distinguished award. In addition, we led the FAA in receiving unqualified financial statements audit opinions from the agency's independent public accountants in FY2011, 2012 and 2013.

Combined with my formal education and leadership training, my practical experience has prepared me well to be the CFO at EPA.

2. **Ms. Wassmer, can you describe how, with your background and experiences working for the FAA, OMB, and with the Office of the Vice President's Millennium Challenge, you will provide a fresh perspective and how you will work to change, as appropriate, EPA's financial management systems?**

Response: If given the honor of serving as the Chief Financial Officer (CFO) of the Environmental Protection Agency (EPA), once I am a member of the EPA team, my first priority will be to use every means possible to identify the changes needed to improve the performance, integrity, and transparency of the EPA's financial management systems. As part of my immersion in the agency, I will meet with a range of internal stakeholders and external customers, review financial documents, and investigate existing practices, policies, and procedures to gain a comprehensive familiarity of the systems that are currently in place and to identify opportunities for improvement. While I cannot provide examples of specific changes I would make until I have an educated, hands-on understanding of the agency's current state, my goal and focus over the course of my appointment will be to make changes in the near-term that will expedite improvements needed to ensure the integrity of the EPA's financial practices while developing and implementing a long-term plan that will drive the continuous improvement of those practices. I will rely heavily on lessons learned and best practices gained over my 20-year career and specifically through my service to the Federal Aviation Administration (FAA), Office of Management and Budget (OMB), and the Millennium Challenge Corporation to apply a strategic, data-driven approach to implementing sound business practices that will ensure performance and accountability.

In my current work as Assistant Administrator for the Office of Finance and Management for the FAA as well as in my previous roles as Vice President of Administration & Finance/CFO for the Millennium Challenge Corporation and the FAA, I have been responsible for providing oversight and management for each agency's complex, multi-billion dollar appropriations and ensuring accountability to the American taxpayer for all laws, policies, and procedures. In each of these positions as well as in my role as Deputy Director of the Office of Budget at FAA, I have also spearheaded the reorganization of financial organizations and operations to optimize financial reporting, financial systems, internal controls, audit and accounting standards, budget formulation and execution, performance management and cost controls.

Regardless of the current health of a financial management system, my experience has taught me that the role of a leader is to ensure that the system remains on a continuous path of improvement. As with any process, something can always be done better. It is a matter of

proactively looking for those opportunities by tracking and analyzing meaningful data, listening to the feedback of stakeholders, and measuring performance against relevant targets. This is what I have done at the FAA, OMB, and the Millennium Challenge Corporation, and it is what I would do as CFO of the EPA.

3. **Ms. Wassmer, one of the roles of the Chief Financial Officer is to oversee EPA's goal setting process. Can you explain how you would ensure that EPA is working every day to enhance safeguards for pregnant women, children, and other vulnerable populations?**

   Response: If confirmed as the Chief Financial Officer (CFO), goal setting would be an important responsibility of mine and integral to Agency decision making. I look forward to working within EPA to set forth strategic direction and consider tough choices needed to meet our mission. As I have done at FAA and in previous positions, I will work with the relevant office(s) at EPA to use a data-driven approach to inform EPA's planning process to ensure that the appropriate level of safeguards are in place for all of the American public, including sensitive populations.

4. **Ms. Wassmer, can you describe what in your background best prepares you to be EPA's Chief Financial Officer?**

   Response: Over my 20+year career since graduate school, I have worked in all levels of the government's financial arena – from a new analyst to a seasoned Assistant Administrator for Finance and Management. I understand and have successfully shouldered the important responsibility, the increased scrutiny, and the critical accountability that comes with being a Chief Financial Officer (CFO) and ensuring the effective, judicious execution of an agency's budget. Yet, as with everyone, I am the sum total of my experiences. Many of those experiences have taught me what works in a particular situation, while others have shown me what does not work. In my professional life, the worker, the employee, the colleague, the leader I am today was formed by each of those experiences, and it is that, more than anything, which has best prepared me to successfully take on the role of the Environmental Protection Agency's CFO.

   Growing up, my parents instilled in me through their own careers and actions the belief that public service is a noble calling and that it is an honor to be in a position where you can serve others. In my first jobs out of college as a job developer for tradeswomen and project manager in Chicago, I learned how you can help others excel by ensuring they have the opportunity to be successful. Through my work in South Africa, I learned that if you engage the people who are most affected by a problem, their input will often help you identify the best solution. It also reinforced my belief that given opportunities, individuals can achieve great heights and that everyone deserves to be treated with dignity and respect. During my time at OMB, I learned from master senior executives and policy officials who showed me each day through their actions that integrity is always a personal option and that you should always strive to do the right thing, even when it is the harder or unpopular path. At the Millennium Challenge Corporation, I learned the true value of a dollar, and how far you can stretch it if you optimize your resources and focus on what is truly needed, not what is most wanted. I was reminded that a fresh perspective can help you identify new ways to work

smarter and achieve cost savings that can be reinvested in the programs that make the biggest difference.

As the Assistant Administrator for the Office of Finance and Management, I stood-up a new, first-of-its-kind shared services organization that today provides efficient and effective enterprise-wide business solutions and services to customers across the FAA as well as to the Department of Transportation and other government agencies. This has been an incredible learning experience. It taught me how to work with many diverse senior executives with differing opinions and personal agendas and how to facilitate consensus for the adoption of the best possible decisions for the agency. It also reinforced my belief that as the leader of an organization, you are ultimately responsible for the decisions made and the quality of the services provided. So, you have to set the bar high, make your expectations clear, continually take the pulse of your organization, proactively identify and try to fix what does not work or what could be improved, put reliable systems in place that measure performance, be open to a course correction, and help make the people you work with and the people you work for successful.

While I could not begin to list everything I have learned and been taught over the course of my career, I have a deep understanding of what it takes to be a leader in a government agency and to be a responsible steward of the taxpayers' resources. I will bring these experiences with me if I am given the opportunity to serve as the CFO of the EPA, and I will work every day to restore and ensure the integrity of the agency's financial management systems and to earn the trust of you and the American taxpayers.

5. **Ms. Wassmer, one of the EPA Chief Financial Officer's responsibilities is to be the agency audit follow-up official responsible for agency-wide audit resolution and ensuring action officials implement corrective actions in response to OIG recommendations. Do you agree that, if confirmed, you will work with agency officials to ensure that appropriate actions are taken to implement corrective actions in response to OIG recommendations?**

Response: I respect the Inspector Generals' independent oversight of agency programs and operations. I believe an IG's mission to promote efficiency, effectiveness, and prevent and detect fraud, waste, and abuse aligns with a Chief Financial Officer's ethical and legal responsibility to ensure sound and proper use of the American taxpayers' dollars. If confirmed, I will work with the EPA's OIG and program and regional offices, as appropriate, to agree on and implement appropriate corrective actions as expeditiously as possible.

Senator Vitter

1. **Are you familiar with the criminal case against John C. Beale? As you should know, Beale was a career civil servant that bilked the agency for millions in unearned bonus pay, unauthorized travel, and by simply being paid for work he did not do. As the chief financial officer for the agency, it will in large part be your responsibility to develop and implement new systems to protect against this sort of fraud in the future. Please share with the Committee the steps you will take in your first 100 days to reform the agency and prevent future fraudulent acts.**

   Response: I have only seen press coverage and early warning reports issued by the Inspector General in December that were prepared at your request. Based on what I have seen, strengthened internal controls and careful monitoring of those controls would deter such conduct in the future and, if detected, end it more quickly and effectively. I take very seriously my responsibility to be a trustworthy steward of taxpayers' dollars. If confirmed, I will review the facts of the incident and the actions EPA has completed or plans to complete to ensure that ineffective controls, which may have failed to prevent Mr. Beale's fraud, are addressed swiftly and that compliance is monitored closely.

2. **In the case of John Beale, it appears that he could not have been able to accomplish his fraud against the American taxpayer without the assistance, either knowing or unknowing, or other EPA staff. For example, the Committee has learned that Robert Brenner was often the one who approved Beale's requests for bonuses and that Beth Craig approved his travel. Have you had the opportunity to review the facts of this case? Do you concur with my assessment that others at the agency participated, perhaps unknowingly, in Beale's fraud? What do you plan to do in your position as CFO to ensure that EPA employees are not bilking the taxpayers out of millions?**

   Response: I have not had the opportunity to review the facts of this case in detail. However, if confirmed, I will conduct a thorough and expeditious review of the facts and the actions EPA has completed or plans to complete to ensure the appropriate internal controls and compliance monitoring are in place to prevent the fraud Mr. Beale perpetuated. I also will ensure the OIG receives my full cooperation in its ongoing investigation.

3. **In the case of John Beale-did you know that he was still on pay roll AFTER his manager-Gina McCarthy-believed he had retired from the agency? How can something like that happen? Do you agree with me that such a disconnect is unacceptable?**

   Response: Again, I am not familiar with the details of this case. If confirmed, I will review the facts of the incident and ensure that EPA has taken or takes the necessary actions to prevent future fraud such as this.

4. **Are you aware of the fact that the EPA Inspector General has identified "Workforce Planning" as a serious management and performance challenge for the agency? Are you aware of the fact that according to the EPAIG, EPA currently does not identify**

the essential functions of staff based on data? Do you agree with me that a failure to identify essential agency functions based on data is a serious failing? Wouldn't the Harvard School of Public Policy frown on such a shabby state of affairs?

Response: I can assure you that I value the prudent use of sound, reliable data to inform decisions. In fact, throughout my career, I have relied heavily on data-driven approaches to make strategic business decisions at the corporate level. I am aware of the Inspector General's work on this important issue and understand its concerns regarding workload planning at EPA. If confirmed, I will review the issue and the actions EPA has completed or plans to complete to improve workload planning across the Agency so I can make a more informed decision regarding the appropriate next steps to move the Agency forward on this issue.

5. **Are you aware of the fact that despite prodding from GAO and the IG, EPA has not developed analytical methods or collected data to measure its workload and the corresponding workforce levels necessary to carry out that workload? How do you intend to remedy that?**

   Response: I respect the Inspector Generals' and Government Accountability Office's independent oversight of agency programs and operations. Their work to promote the efficient and effective use of the American taxpayers' dollars aligns with a Chief Financial Officer's duty to be a responsible steward of those resources. I am aware of the OIG and GAO reports and understand their concerns regarding workload planning at EPA. If confirmed as CFO, I will take a close look at this issue so that I can determine the appropriate next steps to drive the Agency's progress on data-driven workforce planning.

6. **Are you aware that when the EPW Committee asked EPA how much money the agency spent to conduct the watershed assessment of the Bristol Bay Watershed in Alaska, EPA admitted to my staff that they had no way of calculating the amount of in house resources dedicated to the effort? Do you find such a state of affairs acceptable? If not, will you commit to me today that as the CFO you will develop a process that will require the agency to know how much taxpayer dollars are being spent on agency activities?**

   Response: I was not aware of this issue until recently, and I am not familiar with the details. However, in my experience, cost accounting can provide useful financial management data to inform decisions to allocate budget resources, initiate or modify programs or projects, improve efficiency, and evaluate performance. If confirmed as CFO, I will review the issue thoroughly and take the appropriate action to expeditiously respond to your concern.

7. **As you may know, there have been 3 OIG reports on EPA justification for workforce level with the first being released on December 20, 2010, the second on September 14, 2011 and the last on August 30, 2013. Over the span of 3 years these reports have come to the conclusion that EPA is not meeting the requirements set by Title 5 CFR Part 250.202 the *Human Capital Assessment and Accountability Framework*, which states that**

workforce planning systems include a workforce analysis process that identifies the size and characteristics of the workforce needed to meet organizational goals. Contrary to this requirement EPA has not conducted the necessary workload analysis to determine the correct number of FTEs needed to specifically carry out the most essential parts of its mission. EPA has not done so for 20 years and still does not do so as of 2013. If confirmed as EPA's next CFO, will you commit to implementing a system can accurately model the workforce needs of the agency.

Response: As I stated previously, I assure you that I value the prudent use of sound, reliable data to inform decisions, and I have relied heavily on data-driven approaches throughout my career to make strategic business decisions at the corporate level. I am aware of the OIG reports and understand its concerns regarding workload planning at EPA. If confirmed as CFO, I will take a close look at the specifics and determine the appropriate next steps to move the Agency forward on this issue.

Senator BOXER. Thank you, Ms. Wassmer.

I want to say to all the family members who are here, thank you. I neglected to do that. I know families make sacrifices. You can just tell from a bit of the back and forth here, politics is not for the faint of heart but, except for Mr. Williams, the rest of you who have not been in political office, I know it is a bit stunning to kind of be in that circumstance to accept some of the shots and arrows. That is the way it is. I think that is why these hearings are important.

I want to say, Ms. Suh, you received some criticism from Senator Barrasso. I am sorry he is not here but I would like to enter into the record without objection an amazing list of letters of support headed by former U.S. Senator Ben Nighthorse Campbell, Ducks, Ltd., Outdoor Industries Association, Nature Conservancy, Student Conservation Association, Southeast Tourism Society, Trust for Public Land, Land Trust Alliance, Defenders of Wildlife, Wilderness Society, and American Sports Fishing Association, Congressional Sportsmen Foundation, Pheasants Forever, Quail Forever, Theodore Roosevelt Conservation Partnership, Trout Unlimited, Izaak Walton League of America, Wildlife Management Institute and the Mule/Deer Foundation. Place these letters in the record because I think that is a tremendous list of support.

[The referenced information was not received at time of print.]

Senator BOXER. Second, I am going to put into the record what I said to Senator Barrasso. You were with the William and Flora Hewlett Foundation as well as the David and Lucile Packard Foundation, named after the very, very famous David Packard, so important to Silicon Valley in the long ago days when it got started.

I think it is important to see some of the groups that these foundations support: Bipartisan Policy Center, Catholic Charities, Christian Coalition, the NAACP, Theodore Roosevelt Conservation Partnership, Western Governors Association, American Farmland Trust, National Geographic Society, National Trust for Historic Preservation, and Taxpayers for Common Sense.

I know when you were in those foundations you made suggestions to fund these very organizations. I want to put that into the record.

[The referenced information was not received at time of print.]

Senator BOXER. Then I want to home in on your sense of natural gas because as I look at natural gas, it is a very important contribution; it is less carbon than the fossil fuels and I look at it as a transition fuel because I am hoping that we can get clean energy but it is slow and I think it is a very important part of our mix.

I also believe that it is critical that it be done safely because my view is having watched nuclear power, when nuclear power is done safely everyone supports it but when it is not done safely—and we have had that experience in our State—it shuts down.

I want to ask you specifically if you could share your view on the role of natural gas and how it fits into the Administration's energy strategy.

Ms. SUH. Thank you very much for the opportunity to answer that question.

Not only do I support the President's all of the above energy strategy but specifically as you referred to natural gas' role within

that portfolio of energy supply in the country. It is hugely important.

In 2013, I believe natural gas royalties returned $1.6 billion to the American taxpayer in the form of royalties. Twenty percent of Federal lands accounts for 20 percent of the natural gas production in the country. I recognize the importance of that and I am committed to it. I think that commitment is demonstrated by the support I have given to promote robust budgets for energy development that include natural gas development.

Since 2008 there has been a 57 percent increase in the energy budgets within the Department of the Interior and that clearly demonstrates not only a priority around energy development, but specifically an emphasis on how we do this development in a way that is balanced.

The final thing I will say is that energy development is a critical part of our Nation's economy. I think the job at the Department of the Interior, specifically the job if I am confirmed for Fish, Wildlife and Parks, is a job that will require the balance of needs and aspirations of local communities for economic development with the obligations that we have at the Department for conservation.

I think the critical reality is how you pursue that balance with integrity and respect for local communities.

Senator BOXER. Thank you.

Ms. Wassmer, would you agree to meet with my staff as soon as possible to discuss your plans for strengthening oversight of EPA's financial management system to detect and prevent fraud and to effectively manage spending of resources to better protect public health and the environment?

Ms. WASSMER. Yes. If I have the honor to serve in that position, I would be honored to come back and meet with you and your staff.

Senator BOXER. That would be very important.

I am going to ask everyone here to answer yes or no down the line so I can get this out of the way. Do you agree, if confirmed, to appear before this Committee or designated members of this Committee and other appropriate committees of the Congress and provide information subject to appropriate and necessary security protection with respect to you responsibilities?

[All nominees respond in the affirmative.]

Senator BOXER. Do you agree to ensure that testimony, briefings, documents, electronic and other forms of communication of information will be provided to this Committee and its staff and other appropriate committees in a timely manner?

[All nominees respond in the affirmative.]

Senator BOXER. Do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed?

[All nominees respond in the negative.]

Senator BOXER. Thank you all.

Senator Vitter.

Senator VITTER. Thank you, Madam Chair.

Ms. Suh, in light of your answer to the Chair's first question about natural gas, the obvious follow up is this. In light of that, why did you say "the pace and magnitude of this development"—

meaning natural gas—"is easily the single greatest threat to the ecological integrity of the west"?

Ms. SUH. Thank you, Senator Vitter, for that question. I want to thank your staff for the opportunity to meet with them in the last couple of weeks.

Development has consequences for landscapes. Impacts associated with development are, in many ways, inevitable, so the impacts associated with natural gas, particularly natural gas development that occurs over a large area and large acreage has impact.

The role that I have at the department and the role for me specifically around how you balance that impact with the need for economic development and fulfilling the aspirations of communities is demonstrated by my report.

Senator VITTER. Can I take it from this quote that you disagree with the current "pace and magnitude of this development"?

Ms. SUH. I am sorry, could you clarify the question?

Senator VITTER. The quote suggests that you disagree with the current "pace and magnitude of this development in the west." Is that correct or not?

Ms. SUH. That is not correct.

Senator VITTER. Again, why did you say that? I don't understand your first answer. Why did you say that?

Ms. SUH. Again, there are real impacts associated with energy development. The question is how do you balance those impacts with the conservation and economic needs of communities?

Senator VITTER. Do you think those impacts of natural gas in the west is "the single greatest threat to the ecological integrity of the west"?

Ms. SUH. Again, development has consequences but I believe that those consequences can be balanced in a rational and reasonable way.

Senator VITTER. The Administration decided to implement a drilling moratorium in the Gulf after the BP disaster. That cost thousands of jobs and a lot of jobs overseas. Did you raise any objection to that decision when it was being made?

Ms. SUH. I was not a part at all of any of those conversations or any of the decisionmaking process around that moratorium.

Senator VITTER. Were you ever asked in your role in Interior about the potential impacts to the Treasury of shutting down that energy development?

Ms. SUH. No, sir, I was not.

Senator VITTER. Did you object in any way to the recent decision by Fish and Wildlife to move forward with 30-year permits that allow for wind farms to kill a significant number of bald eagles?

Ms. SUH. I was not involved in that decision. I am aware of that decision and it is my understanding that rule not only applies to the wind industry but to industry overall and enables us specifically with the industry to develop a regulatory framework for both certainty and predictability and an opportunity for permitting and therefore, enforcement.

I believe it gives the Fish and Wildlife Service a greater ability to ensure the protection of that species and ensure the appropriate oversight of all industries.

Senator VITTER. Did you object to the Office of Surface Mining Stream Buffer Zone Rule which would cause up to 7,000 job losses and have a negative impact in 22 States?

Ms. SUH. Again, I was not involved in that policy decision.

Senator VITTER. If you haven't been involved in any of the stuff, why have you said that in your current role, "I've been involved in every single one of the policy priorities from Secretary Salazar to now Secretary Jewell." It is a very broad-based role in the Department. You said that in that quote. What am I missing because it seems at odds with your answers here?

Ms. SUH. As the CFO for the Department of the Interior, I am primarily responsible for budget formulation and execution. I have supported and been involved in support of all the major policy priorities for each of the nine bureaus that we have.

Senator VITTER. I have just mentioned some of the major policy priorities and you said you have not been involved in any of those.

Ms. SUH. I have been involved in supporting the necessary resources required to support those policy decisions.

Senator VITTER. Just a comment. It strikes me as those two things are at odds but I will come back to some other concerns.

Thank you.

Senator WHITEHOUSE [presiding]. Ms. Suh, welcome to the Committee. The Chairman has stepped out so I have the gavel momentarily until she returns.

I wanted to follow up on the conversations you and I have had which are quite specific to Rhode Island. One has to do with the national park that we are hoping to establish in Rhode Island. We are the State with the least national parks of any State, and you could probably fit our national park about in this hearing room.

Senator Reid has been working very hard on the Blackstone Valley Historic District becoming a national park. One of the ways in which we would like the different elements along the Blackstone River to be accessible and connected is by water as well as by car and bicycle.

I want your assurances that you will work with me and Senator Reid in development of that project. It has been described as pearls threaded on a string. We want to make sure the string is both road, bike, hike and water as well for kayakers, canoers and people who want to take advantage of that.

Ms. SUH. Thank you again for the time you spent with me. I absolutely will commit to working with you in pursuing the opportunity for the park designation and the opportunities specifically around the waterways that can provide the connectivity between those pearls.

Senator WHITEHOUSE. Thank you.

Rhode Island is a small State, so all of the opportunities that we have for recreation are really precious to us. We have some very, very special rivers. They are not great rivers. It is not the Columbia or the Mississippi but we have a number of rivers and hundreds of dams as a result of being an old State, an original State and one with all these rivers.

Some of the dams are very old, some are very small and present different problems, but a common theme that I hear is that if you wanted to build a canoe or kayak passage to help make navigating

a dam safer, easier and expand the recreational opportunities there or if you wish to install a micro-hydro facility to generate a little bit of power from the dam, or if you wish to put in a fish ladder so that the fish that used to swim up these rivers in order to breed could do so again and you could restore that part of their environment.

In all of those different circumstances, you run across multiple Federal agencies and relatively complex and demanding procedures, which if you wanted to do something with a dam on the Columbia, the Mississippi, the Missouri or some of our major rivers, you could understand. For some of these very little rivers and very small dams, particularly if it is a private group of canoers and kayakers who want to build the passage, the regulatory cost of trying to sort through that basically disables anyone's ability to take advantage of those opportunities.

I hope very much that you will work with me and my office in trying to identify ways for these very small dams on very small rivers that the application process, the information that is required and all that can be reduced so that some of these very beneficial uses can be made feasible where they aren't now because of the cost of compliance.

Ms. SUH. Senator, if confirmed, I am absolutely happy to continue to work with you on this issue. Since our conversation, I actually went back and had some conversations within the Department to try to get some sense of why these potential hurdles exist and what we can do about them.

Again, if confirmed, I am committed to working with you and your staff to ensure that we utilize the opportunities that we have with those resources to maximize the recreational benefits we have for our population.

Senator WHITEHOUSE. I appreciate it. Thank you very much. Best wishes to you.

Senator BOXER [presiding]. We will now go to Senator Inhofe.

Senator INHOFE. I have to say, Ms. Suh, I had not seen that quote and I am in shock. You say "the pace and magnitude of gas development is easily the single greatest threat to the ecological integrity of the west," the single greatest. What is the threat? Do you stand by that statement now or have you changed your mind?

Ms. SUH. Sir, I think I have made it clear that as a member of this Administration, I support all of the above energy policy and I support natural gas development. I support the opportunities for pursuing energy development.

Senator INHOFE. That isn't satisfactory. That is such a strong statement. I am still in shock.

You and I talked about a specific problem we have in Oklahoma, the lesser prairie chicken and the American burying beetle in the eastern part of the State. The American burying beetle has been endangered since 1989. We have found significant populations of that particular critter and we had a system for a while called the Beta Wade. I don't know what happened to it or if you are familiar with that system.

It was supposed to be replaced by something to correct the problem. The American burying beetle in one project, a $100 million

pipeline, has completely stopped operations. For another company, it has already cost $12.5 million.

In April, I brought this up and was told the Service would approve a new conservation plan by December 2013. It is now December 2013. I know you haven't been here but will you make any kind of commitment to come up with a conservation plan? We have people losing money every day over something over which they have no control whatsoever.

Ms. SUH. I understand. After the conversation that we had last week, I followed up with the Fish and Wildlife Service to try to determine the timeframe. It looks like spring—March or April 2014. My understanding is the work they are doing on the general conservation plan is work they are specifically doing with industry to ensure whatever ends up in the plan is workable and balanced with industry and trusts.

Senator INHOFE. Let's say April 2014?

Ms. SUH. I believe that is correct.

Senator INHOFE. We will be having hearings, and it is something that really needs to be corrected. It is a very serious problem.

Last April, Richard Hatcher, Director of the Oklahoma Department of Wildlife Conservation, wrote Fish and Wildlife asking to start a delisting process. Apparently it is accurate that these populations of the American burying beetle are plentiful now and they are coming along. He has not gotten a response from that letter and that was in April. If you are confirmed, would you respond to him or see that a response is made?

One thing I do not like about bureaucracy is if there is no response, then you do not have any idea. It seems as if that is sometimes deliberate. Would you make an attempt to give a response to Mr. Hatcher if you are confirmed?

Ms. SUH. Yes, sir, if I am confirmed, I absolutely will commit to that.

Senator INHOFE. Dr. Burke, when Lisa Jackson was the Director of the EPA, there was a lot of conversation at that time about hydraulic fracturing, about precision drilling and about horizontal drilling. I would say this and I should have mentioned this while I was asking you a question, Ms. Suh, that you talked about the increase in development of natural gas during the last 4 or 5 years. That is all on private or State land. None of that—in fact, we have had a reduction on Federal land. This is the big problem we have.

Do you agree with Lisa Jackson? I asked her, has there ever been a confirmed case of groundwater contamination as a result of hydraulic fracturing? She said no.

Mr. BURKE. I am not familiar with that question but from my own experience, having done many studies of groundwater contamination, I am not familiar with a specific case.

Senator INHOFE. Very good, that is essentially what she said. We have talked about this over a period of time. It happens the first hydraulic fracturing was done in my State of Oklahoma in 1948 and there have been over a million applications of this and yet we do not have that.

Ms. Suh, do you agree with his response to that question?

Ms. SUH. I am less sophisticated in terms of my exposure to research and development but I am not aware of any specific studies or findings either.

Senator INHOFE. Thank you, Madam Chairman.

Senator BOXER. Senator Fischer.

Senator FISCHER. Thank you, Madam Chair.

A little follow up from Senator Inhofe's question, Ms. Suh. Are you aware that from 2008 to 2012, the U.S. natural gas production increased by 11 percent overall as it fell 13 percent on Federal lands?

Ms. SUH. I was not aware of that statistic.

Senator FISCHER. If confirmed, do you hope that energy production on Federal lands will have gone up or down on your watch?

Ms. SUH. Energy production on Federal lands obviously continues to be a hugely important part of our economy. I think the responsibility of the Federal Government, specifically the Department of the Interior, is to balance the opportunity for economic development which obviously means a lot to the members of this Committee and your States. I commit to that.

Senator FISCHER. Would you personally try to look for ways to increase energy production on Federal lands?

Ms. SUH. I specifically would, if confirmed, look for opportunities where there are development opportunities to balance those development opportunities to allow those development opportunities to continue to move forward in a way that allows us to conserve our natural resources and fulfill our statutory obligations for those resources.

I believe you can balance those things. I believe it is all about the approach and all about the intention of driving toward a solution that is balanced on both sides.

Senator FISCHER. Do you believe balance can be found between conservation and management of natural resources?

Ms. SUH. Absolutely.

Senator FISCHER. On to pesticides, which I mentioned in my opening statement. The EPA must consult with the U.S. Fish and Wildlife or the National Marine and Fisheries Service when it comes to dealing with pesticides. The EPA and the Services currently disagree on the fundamental legal and science policy matters related to their respective obligations under the Endangered Species Act and FIFRA.

There are scientific disagreements along with the lack of a sound and workable process for consultation under the ESA. That creates what I believe to be a huge bottleneck that we are seeing for the pesticide registration process. Another issue with that is also the lack of resources, either human or monetary, that the Services face.

It is really difficult for I think agricultural innovation to take place in this area. I think it is extremely important not just to the agricultural economy but to our natural resources as well. How do the Services plan to secure enough funding and more importantly, find other alternatives so that you can keep pace with that workload we are seeing with the pesticide consultation?

Ms. SUH. Obviously these are challenging budget times. I think the Fish and Wildlife Service is working hard to prioritize its budget in a way that delivers to the American public. My understanding

is that they are working through recommendations of the National Academy of Sciences report that will help inform the Federal family in how we can best proceed in a way that expedites clarity and transparency around these outcomes.

Senator FISCHER. You talked about the Federal family. Would you try to work in your position, if you are confirmed, to work better with EPA to come up with some kind of agreement when it comes to these innovations? I think they are very positive with regards to pesticides?

Ms. SUH. I absolutely would commit to that. I believe the role we all have in whatever Department we sit, we are responsible for ensuring that we act reasonably, we move beyond our silos and try to create outcomes that have positive consequences for the American people and the resources that we manage.

Senator FISCHER. Can you comment on the role Fish and Wildlife and the National Marine and Fisheries Services play in protecting threatened and endangered species as related to EPA's registration of the products? Do you think you can protect the species and still ensure efficient registrations? Are those mutually exclusive goals? Can you bring them together?

Ms. SUH. Not understanding the specifics of the situation, I haven't read the National Academy of Sciences report but yes, I do believe that they are not mutually exclusive goals. The pursuit is to try to do exactly what you say in creating that balance.

Senator FISCHER. Thank you. I think it is very, very important for our environment and our economy that these move forward quickly.

Ms. SUH. Understood.

Senator FISCHER. Thank you.

Senator BOXER. Senator Boozman.

Senator BOOZMAN. Thank you, Madam Chair.

Ms. Suh, I want to touch briefly on a couple of things that were mentioned when you were in the office. One of those is the national fish hatcheries and how important those are in the mission of mitigation.

The other was the Neosho Mucket and rabbitsfoot mussel, talking about dramatically increasing the critical habitat of that in Arkansas, 750 miles. Most people feel that is 38 percent in excess but asking for a commitment to look at these issues and as you do that to look at the serious consequences of listing critical habitat and the economic development that goes along with it.

Senator Inhofe has a similar situation. I think if you went through Congress, we all would have some sort of similar things but this is very, very important. Make sure that it is based on science and common sense.

Ms. SUH. Absolutely. I commit first and foremost to abiding by scientific integrity principles and abiding by the best available science that we have in the Federal Government.

Specifically as it relates to the fish hatchery issue, I recognize the importance of those facilities in your State. I know the Fish and Wildlife Service has made it clear they are not closing any fish hatcheries in 2014.

Again, obviously these are difficult budget times, so if confirmed, I look forward to working with you to try to figure out how we can

balance our resource constraints with the opportunities to keep hatcheries viable and open.

Senator BOOZMAN. Thank you very much.

Dr. Burke, in the spirit of good science, in May of this year I had the opportunity to question Dr. Collins of NIH. I asked him if taxpayers were providing money for scientific research. If they were publicly funded, should they have access to the materials? His answer was, "Yes, we strongly support the need for that. If the public has paid for the research, the public should have access to it. At NIH, I think it is fair to say it has taken the lead in trying to make sure that kind of access to information happens in a timely fashion."

I asked him if there was any reason that research would not be provided. One of the guys with him was head of Infection Disease and he said, yes. If we are working on some microbe that got loose or the public learned how to replicate it or whatever and it was a threat to the public, they probably wouldn't do that.

One of the problems we have had is, as we have seen the clean air regulations coming about, not getting access to the science that the regulations are based on. Can you comment as to your feeling about that, if that is appropriate or not appropriate? How is that justified?

Mr. BURKE. Thank you for the question. I think it is an important one. As an academic scientist, we are grappling with this issue, particularly in the biomedical sciences. I think science has to be transparent and credible and to every extent possible, particularly data funded by the Federal Government, be made available for reanalysis and stimulate greater research and understanding.

I do want to mention one caution. As a Dean at Hopkins, we are concerned about very personal, confidential medical records. We go to great lengths to protect individual personal records to some regard and where there are individual identifiers. However, I think there are ways to anonymize data, there are ways to make data more available and I agree working with the research community to promote much greater availability of research data.

Senator BOOZMAN. I understand with medical data but the reality is that every other discipline in medicine—I am an optometrist by training and I go to meetings all the time and they talk about patients all the time. They don't say who they are but they talk about specific patients with specific problems and studies based on specific patients with specific problems.

The idea that the data cannot be released because you cannot figure out a way to redact that or make it such that you are not providing those protections just doesn't make sense to me.

Mr. BURKE. I know being a member of the academic community, we are making great strides in doing just that to make the data available wherever possible.

Senator BOOZMAN. So you will work with us to make sure that data you use to make decisions, we will get the data?

Mr. BURKE. If confirmed, I look forward to working on that issue and working toward making data much more widely available.

Senator BOOZMAN. Again, as a very prominent scientist, you certainly understand the importance of that. You mention your friends

who suffered injuries and things but when you are dealing with making such significant findings that affect the public, how can Congress do that if they don't have access to the data or if the rest of the scientific community cannot have access to the data to make sure it is good data?

Mr. BURKE. I agree with you but I also feel that there are laws to protect the individual but I think we can achieve a balance.

Senator BOOZMAN. Thank you. I understand totally. I guess the problem is that everyone else has been able to figure out how to do this except for EPA.

Mr. BURKE. If confirmed, I would be very happy to look into that and to work with EPA so that we can make data more greatly available.

Senator BOOZMAN. Thank you.

Thank you, Madam Chair.

Senator BOXER. Thank you, Senator. I look forward to working with you on that.

I want to thank the panel very much. We have asked you a number of questions and will keep the record open for more than 2 weeks, until January 4. Do you each commit to answer those written questions and get them back to us by January 4, a little more than 2 weeks? Two weeks falls on New Year's Eve and I didn't want to think about you sitting there writing answers on New Year's Eve. Would you commit to answering them? I have a number myself. Is that all right?

[All nominees respond in the affirmative.]

Senator VITTER. Madam Chair, I had understood we would have a second round.

Senator BOXER. I don't need a second round but go ahead.

Senator VITTER. Thank you.

First, I would like unanimous consent to put into the record the full written statement of Jonathan Turley we discussed a while ago.

Senator BOXER. Sure.

[The referenced information follows:]

Written Statement

Jonathan Turley,
Shapiro Professor of Public Interest Law
George Washington University

"The President's Constitutional Duty to Faithfully Execute the Laws"

Committee on the Judiciary
United States House of Representatives

2141 Rayburn House Office Building

December 3, 2013

Chairman Goodlatte, Ranking Member Conyers, and members of the Judiciary Committee, my name is Jonathan Turley and I am a law professor at George Washington University where I hold the J.B. and Maurice C. Shapiro Chair of Public Interest Law. It is an honor to appear before you today to discuss the constitutional concerns raised by recent nonenforcement polices and the President's duty to faithfully execute the law of the United States.

The issue before the Committee is clearly a difficult one. It is often difficult to separate the merits of the underlying policies from the means used to achieve them. It so happens that I agree with many of the goals of the Administration in the various areas where the President has circumvented Congress. However, in the Madisonian system, it is often more important how you do things than what you do. We have long benefited from a system designed to channel and transform factional interests in the political system. When any branch encroaches upon the authority of another, it not only introduces instability into the system but leaves political issues raw and unresolved. However, to paraphrase one of Benjamin Franklin's favorite sayings, the Constitution helps those branches that help themselves. Each branch is given the tools to defend itself and the Framers assumed that they would have the ambition and institutional self-interest to use them. That assumption is now being put to the test as many members remain silent in the face of open executive encroachment by the Executive Branch.

While I believe that the White House has clearly "exceeded its brief" in these areas, this question of presidential nonenforcement has arisen periodically in our history. In the current controversy, the White House has suggested an array of arguments, citing the interpretation of statutory text, agency discretion, or other rationales to mask what is clearly a circumvention of Congress. It also appears to be relying on the expectation that no one will be able to secure standing to challenge such decisions in court. Finally, there is no question that the President as Chief Executive is allowed to set priorities of the administration and to determine the best way to enforce the law. People of good faith can clearly disagree on where the line is drawn over the failure to fully enforce federal laws. There is ample room given to a president in setting priorities in the enforcement of laws. A president is not required to enforce all laws equally or dedicate the same resources to every federal program. Even with this ample allowance, however, I believe that

President Barack Obama has crossed the constitutional line between discretionary enforcement and defiance of federal law. Congress is given the defining function of creating and amending federal law. This is more than a turf fight between politicians. The division of governmental powers is designed to protect liberty by preventing the abusive concentration of power. All citizens –Democratic or Republican or Independent – should consider the inherent danger presented by a President who can unilaterally suspend laws as a matter of presidential license.

In recent years, I have testified and written about the shift of power within our tripartite government toward a more Imperial Presidential model. Indeed, I last testified before this Committee on the assertion of President Obama that he could use the recess appointment power to circumvent the Senate during a brief intrasession recess.[1] While I viewed those appointments to be facially unconstitutional under the language of Article I and II (a view later shared by two federal circuits), I was equally concerned about the overall expansion of unchecked presidential authority and the relative decline of legislative power in the modern American system. The recent nonenforcement policies add a particularly menacing element to this pattern. They effectively reduce the legislative process to a series of options for presidential selection ranging from negation to full enforcement. The Framers warned us of such a system and we accept it – either by acclaim or acquiescence – at our peril.

The current claims of executive power will outlast this president and members must consider the implications of the precedent that they are now creating through inaction and silence. What if a future president decided that he or she did not like some environmental laws or anti-discrimination laws? Indeed, as discussed below, the nonenforcement policy is rarely analyzed to its natural conclusion, which leads to a fundamental shift in constitutional principles going back to *Marbury v. Madison*.[2] The separation of powers is the very foundation for our system; the original covenant reached by the Founding Generation and passed on to successive generations. It is that system that produces laws that can be truly said to represent the wishes of the majority of Americans. It is also the very thing that gives a president the authority to govern in the name of all Americans. Despite the fact that I once voted for President Obama, personal admiration is no substitute for the constitutional principles at stake in this controversy. When a president claims the inherent power of both legislation and enforcement, he becomes a virtual government unto himself. He is not simply posing a danger to the

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[1] I testified before Congress last year on the controversy surrounding these recess appointments. *See Executive Overreach: The President's Unprecedented "Recess" Appointments Before the H. Comm. on the Judiciary*, 112th Cong. 35-57 (2012) (statement of Jonathan Turley, Professor, The George Washington University Law School) [hereinafter *Executive Overreach*]. I also address the controversy at length in two forthcoming law review articles. *See* Jonathan Turley, *Recess Appointments in the Age of Regulation*, 93 B.U. L. Rev. 1523 (2013); Jonathan Turley, *Constitutional Adverse Possession: Recess Appointments and the Role of Historical Practice in Constitutional Interpretation*, 2013 WIS. L. REV. (forthcoming fall 2013); *see also* Jonathan Turley, Op-Ed., *Recess Appointments: President as Ruler*, USA TODAY, Feb. 15, 2012, at 7A.

[2] 5 U.S. (1 Cranch) 137, 177 (1803).

constitutional system: he becomes the very danger that the Constitution was designed to avoid.

I. THE SEPARATION OF POWERS WITHIN THE TRIPARTITE SYSTEM

A. Factions and the Legislative Process.

One of the greatest dangers of nonenforcement orders is not what it introduces to the tripartite system but what it takes away. The Framers created three "equal" branches but the legislative branch is the thumping heart of the Madisonian system. It is the bicameral system of Congress that serves to convert disparate factional interests into majoritarian compromises. In this sense, Congress is meant to be a transformative institution where raw, often competing interests are converted by compromise and consensus. One of the most striking aspects of the recent controversies involving presidential nonenforcement is that they involved matters that were either previously before Congress or actually under consideration when President Obama acted unilaterally.

The role of the legislative process in stabilizing the political system is key to the success of the American system. Madison saw the vulnerability of past governmental systems in the failure to address the corrosive effects of factions within a population. The factional pressures in a pluralistic nation like the United States would be unparalleled and Madison understood that these factions were the expression of important political, and social, and economic interests. As Madison explained, "liberty is to faction what air is to fire, an ailment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency."[3] Congress is where these factional interests coalesce and convert in an open and deliberative process.

The point of this background discussion is that the loss caused by the circumvention of the legislative branch is not simply one branch usurping another. Rather, it is the loss of the most important function of the tripartite system in channeling factional interests and reaching resolutions on matters of great public importance.

The importance of this central function of Congress is magnified when the country faces questions upon which there is great division. Ironically, these are the same areas where presidents are most likely to issue nonenforcement orders due to opposition to the underlying legislation. Consider illegal immigration. There are few issues that are more divisive today. The immigration laws are the product of prolonged debates and deliberations over provisions ranging from public services to driver's licenses to ICE proceedings to deportations. Many of these issues are considered in combination in comprehensive statutes where the final legislation is a multivariable compromise by legislators. Severity in one area can at times be a trade-off for leniency in another area. Regardless of such trade-offs, the end result is by definition a majoritarian compromise that is either signed into law by a president or enacted through a veto override. The use of executive orders to circumvent federal legislation increases the shift toward the concentration of executive power in our system and the diminishment of the role of the

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[3] THE FEDERALIST NO. 10, 78 (James Madison) (Clinton Rossiter ed., 1961).

legislative process itself. It is precisely what the Framers sought to avoid in establishing the tripartite system.

B. The Royal Prerogative and the Faithful Execution of Federal Law.

Juxtaposed against this legislative power is the Chief Executive. The Framers created a Chief Executive with a relatively short term of four years and clearly defined powers to fit within this system of shared government. Despite the recent emergence of an uber-presidency of increasingly unchecked powers, the Framers were clear that they saw such concentration of power to be a danger to liberty. Indeed, the separation of powers is first and foremost a protection of liberty from the dangers inherent in the aggregation or aggrandizement of power.[4] The Constitutional Convention and subsequent ratification conventions are replete with statements on the need to carefully confine the Chief Executive to enumerated powers and to specifically safeguard the powers of the legislative branch in the control of the purse and the creation of new laws.

At issue in today's hearing is in many ways the first issue that arose in the creation of the office of a president. The Framers were intimately familiar with English history and law. The suggestion of a president immediately produced objections over the dangers of abuse and unilateral action. This debate occurred against the backdrop of over 150 years of tension with the English monarchy that can be traced to the confrontation of Sir Edward Coke and James I. That confrontation had some interesting parallels to the current debate. At issue was not the circumvention of the legislative but the judicial branch. James claimed the right to remove cases from the court for his own judgment. When various people objected, James noted "I thought law was founded upon reason, and I and others have reason as well as the judges."[5] Modern presidents in nonenforcement policies claim that same basis in reason – adjusting legal authority to a more equitable or more efficient reality. However, in the case of James I, Coke objected that "natural reason" does not make for good laws or legal analysis. Rather, law is a form of "artificial reason and judgment" or "an art which required long study and experience before that a man can attain to the cognizance of it."[6] Even in the face of a treason charge, Coke maintained that, "the king ought not to be under any man, but he is under God and the law."[7]

The principle articulated by Coke drew the distinction between the King and the law – the latter which is made separate from the King and governs the King. It was the rejection of what has been called the "royal prerogative."[8] This rejection was first seen in the state constitutions in crafting the powers of Governors and later manifested in the drafting of the new federal Constitution. For example, Thomas Jefferson wrote in 1783 with regard to the Virginia Constitution that "By Executive powers, we mean no

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4 *See generally*, Turley, *Age of Regulation, supra*.

5 7 Sir Edward Coke, Reports 65, quoted in Roscoe Pound, The Spirit of the Common Law 5 (1921) at 61.

6 *Id.*

7 *Id.*

8 *See* Julius Goebel, Jr., Ex Parte Clio, 54 Colum. L. Rev. 450, 474 (1954); David Gray Adler, *The Steel Seizure Case And Inherent Presidential Power*, 19 Const. Commentary 155, 164 (2002).

reference to the powers exercised under our former government by the Crown as of its prerogative ... We give them these powers only, which are necessary to execute the laws (and administer the government)."[9] Jefferson's statement reflects the same Cokean distinction – now a mantra for American framers in defining the new concept of executive power.

The earliest references to executive power or the presidency in the Constitutional Convention refer to the execution of federal law – affirming the idea that the executive must enforce the law established by the legislative process. Indeed, it was the introduction of the Virginia Plan that most clearly cast this executive model.[10] Roger Sherman stated this most clearly in describing "the Executive magistracy as nothing more than an institution for carrying the will of the Legislature into effect."[11] Likewise, James Wilson defended the model of an American president by assuring his colleagues that "did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of a Legislative nature."[12]

Reflecting these views, and the view of Framers like Madison that the chief executive must only be given power that is "confined and defined,"[13] the first draft of the Take Care Clause read "it shall be his duty to provide for the due and faithful execution of the Laws."[14] That language then became, with the report of the Committee of Detail, "he shall take care that the laws of the United States be duly and faithfully executed." The final language of the Committee of Style was refined further into "The executive power shall be vested in a president of the United States of America ... He shall take care that the laws be faithfully executed." What is most striking about this process is how little the language actually changed – reflecting a general consensus on limiting the office to the execution– as opposed to the creation– of laws.

While the line between legislation and enforcement can become blurred, this view is generally reflective of the functions defined in Article I and Article II. The Take Care Clause is one of the most direct articulations of this division. The Clause states "*[The President] shall take Care that the Laws be faithfully executed . . .* " U.S. Const. art. II, § 3, cl. 4. It is one of the clearest and most important mandates in the Constitution. The Framers not only draw the distinction between making and enforcing laws, but, with the enforcement of the law, the Framers stressed that the execution of the laws created by Congress must be faithfully administered. The language combines a mandate of the execution of laws with the qualifying obligation of their faithful execution.

The constitutional obligation contained in the Take Care Clause is amplified by

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[9] This quote is from Jefferson's Draft of a Fundamental Constitution for Virginia. Adler, *supra*, at 164 (citing Charles Warren, The Making of the Constitution 177 (Harvard U. Press, 1947)).

[10] Max Farrand, 1 The Records of the Federal Convention of 1787 at 62-63 (Yale U. Press, 1911) (Edmund Randolph describing a "national executive ... with power to carry into execution the national laws ... [and] to appoint to offices in cases not otherwise provided for."); *see also* Adler, *supra*, at 164.

[11] Farrand, *supra*, at 65; Adler, *supra*, at 164-65.

[12] Farrand, 1 Records at 62-70; Adler, *supra*, at 165.

[13] *Id.* at 70.

[14] *Id.* at 171; Adler, *supra*, at 165.

the oath that a president takes as a pre-condition for assuming power as Chief Executive under Section 1 of Article II. Indeed, the order of these references is interesting. In order to assume office, a president must "solemnly swear (or affirm) that [he] will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States." U.S. CONST. art. II, §1, cl. 7. The Take Care Clause appears later in Section 3. This section happens to refer to the legislative function of Congress in stating that "from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient." *Id.* Notably, the section affirms the right of a President to ask Congress for legislative action that he deems to be necessary. The clause then affirms the obligation of the President to faithfully execute those laws created by Congress. It is equally significant that the clause following the obligation to faithfully execute the laws is the clause allowing for the impeachment and removal of presidents.

The import of these clauses is that the President can seek legislative changes and even call Congress into session, but it remains the prerogative of Congress to decide what laws will be enacted (subject to presidential signature or veto override).

The most obvious meaning of faithful execution is that the President must apply the laws equally and without favoritism. Favoritism is clearly shown in the failure to enforce the laws against friends or political cronies. However, it can also apply more widely to favored groups or political allies. Merriam-Webster defines "faithful" as "having or showing true and constant support or loyalty." In this controversy, this true and constant support is to the laws themselves. It is worth noting that this is not loyalty tied to the "law" in general – possibly inviting a more nuanced interpretive response to what specific laws serve or disserve the law in general. The use of the plural form encompasses the laws referenced in Article I as the product of Congress. It is those laws that the President is bound to execute faithfully under Article II.

C. Nonenforcement Orders and the Rise of the Fourth Branch.

The current controversy over the nonenforcement of federal law transcends the insular issues of particular statutes or regulations. The American governmental system is being fundamentally transformed into something vastly different from the intentions of the Framers or, for that matter, the assumptions underlying the constitutional structure. As I recently discussed in print,[15] we are shifting from a tripartite to a quadripartite system in this age of regulation. The Administrative State that is credited with so many advances in public welfare has also served to shift the center of gravity in our system to a fourth branch of federal agencies. As a result, our carefully constructed system of checks and balances is being negated by the rise of the sprawling departments and agencies that govern with increasing autonomy and decreasing transparency. At the same time, we have seen a rapid growth of executive power, particularly since 9-11, where the President is asserting largely unchecked authority in many areas.

When the Framers created the tripartite system, our federal government was quite small. In 1790, it had just 1,000 nonmilitary workers. In 1962, there were 2,515,000

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[15] Jonathan Turley, Op-Ed., *The Rise of the Fourth Branch of Government*, WASH. POST (May 24, 2013), at C1; *see also* Turley, *supra*, *Age of Regulation*, at 1542-61.

federal employees. Today, we have 2,840,000 federal workers in 15 departments, 69 agencies and 383 nonmilitary sub-agencies.[16] Indeed, these numbers can be themselves misleading since much federal work is now done by contractors as part of "downsizing", but the work of the agencies has continued to expand. Moreover, technological advances have increased the reach of this workforce. With the expansion of the government has come a shift in the source of governing rules for society. Today, the vast majority of "laws" governing the United States are not passed by Congress but are issued as regulations, crafted largely by thousands of unnamed, unreachable bureaucrats. To give one comparative measure, one study found that in 2007, Congress enacted 138 public laws, while federal agencies finalized 2,926 rules, including 61 major regulations.[17] Adding to this dominance are judicial rulings giving agencies heavy deference in their interpretations of laws under cases like *Chevron*. In the last term, this Supreme Court added to this insulation and authority with a ruling that agencies can determine their own jurisdictions — a power that was previously believed to rest with Congress. In his dissent in *Arlington v. FCC*, Chief Justice John Roberts warned: "It would be a bit much to describe the result as 'the very definition of tyranny,' but the danger posed by the growing power of the administrative state cannot be dismissed."

With agencies increasingly performing traditionally legislative and judicial functions,[18] the nonenforcement of federal law exacerbates the shift away from the original calibration of the tripartite system. Federal agencies are becoming practically independent in their operations in assuming new forms of regulatory law and adjudications. The refusal to execute those laws enacted by Congress would serve to marginalize the legislative branch further and make the federal government even less dependent on or responsive to that branch.

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[16] Turley, *supra*, *Age of Regulation*, at 1533; WALTER E. VOLKOMER, AMERICAN GOVERNMENT 231 (11th ed. 2006) (citing Bruce D. Porter, *Parkinson's Law Revisited: War and the Growth of American Government*, 60 PUB. INT. 50, 50 (1980)). In 1816, the federal system employed 4837 employees. Deanna Malatesta, *Evolution of the Federal Bureaucracy*, *in* 1 A HISTORY OF THE U.S. POLITICAL SYSTEM: IDEAS, INTERESTS, AND INSTITUTIONS 373, 380 tbl.1 (Richard A. Harris & Daniel J. Tichenor eds., 2010).

[17] Anne Joseph O'Connell, *Vacant Offices: Delays in Staffing Top Agency Positions*, 82 S. CAL. L. REV. 913, 936 (2009).

[18] As the number of federal regulations has increased, Congress has shifted the adjudication of many disputes between citizens and their government to administrative courts tied to individual agencies. The result is that a citizen is 10 times more likely to be tried by an agency than by an actual court. In a given year, federal judges conduct roughly 95,000 adjudicatory proceedings, including trials, while federal agencies complete more than 939,000. Turley, *supra*, *Age of Regulation*, at 1533; Anne Joseph O'Connell, *Vacant Offices: Delays in Staffing Top Agency Positions*, 82 S. Cal. L. Rev. 913, 936 (2009).

II. NONDEFENSE ORDERS, PRESIDENTIAL PRIORITIZATION POLICIES, AND SIGNING STATEMENTS

It is important to distinguish between the various ways that presidents can oppose laws, which can blur the line between nonenforcement and inadequate enforcement. While a president does not have authority to negate or amend laws, there is overlap between the branches in different functions. Clearly, for example, the President is allowed to set goals in the execution of laws that place certain public programs above others in priority. No area of the law has one-hundred percent enforcement. There are discretionary actions that can include staffing and resource allocations with impacts on the level of enforcement in a given area. Before delving further into the constitutionality of nonenforcement, three types of executive decisions are important to distinguish.

A. Nondefense Orders.

The nondefense orders arise when presidents decide that their administrations will not defend a challenged law in court. These decisions are relatively rare and highly controversial. Even defenders acknowledge that such a decision should only be considered in circumstances where a president feels that enforcement of a law would conflict with his duty to uphold the Constitution. Indeed, one study showed that between 1974 and 1996, presidents objected to the constitutionality of roughly 250 laws but did not refuse to defend them.[19] Despite these reservations, Presidents Ford, Carter, Reagan, George H.W. Bush, and Clinton did not refuse to defend such laws.[20]

While the duty to defend would seem to be naturally subsumed under the duty to enforce, the Obama Administration draws a distinction between the two duties. Thus, it stated an intent to enforce the law while refusing to defend it. It was a curious distinction for many since continued enforcement would require that the law be defended in challenges.[21] The Justice Department previously adopted a narrow exception to the rule that the "courts, and not the Executive, finally to decide whether a law is constitutional" and that the nondefense of a law would impermissibly create a barrier to judicial review.[22] Unless the law impedes executive power, the Justice Department stated that it would defend laws so long as are not "clearly unconstitutional." That would seem to demand more than simple disagreement with lower courts or adherence to a new or unestablished interpretation of the Constitution.

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[19] Christopher N. May, Presidential Defiance of "Unconstitutional" Laws xiv (1998).

[20] In many cases, presidents used signing statements to interpret the laws compatible with their view of constitutional limits.

[21] Indeed, some have argued that the Administration got it wrong and that there is no duty to enforce or to defend. See Neal Devins and Saikrishna Prakash, *The Indefensible Duty To Defend*, 112 Colum. L. Rev. 507, 508-509 (2012) ("Given President Obama's belief that the DOMA is unconstitutional, he should neither enforce nor defend it.").

[22] Recommendation that Dep't of Justice Not Defend Constitutionality of Certain Provisions of Bankr. Amendments and Fed. Judgeship Act of 1984, 8 Op. O.L.C. 183, 194 (1984).

In light of the foregoing, the Administration's decision that it would not defend the Defense of Marriage Act (DOMA) was a classic example of a nondefense policy. The timing of the decision, however, was curious given the Administration's defense of the law for years and the President's own public ambivalence over same-sex marriage. Thus, this was not a statute that was treated as facially invalid by this president, and it was supported (and signed into law) by another Democrat, Bill Clinton. Nevertheless, while belated, the Obama Administration announced that it could no longer in good faith support a law that it deemed unconstitutional. It notably took this position after previously enforcing the law, leading many to question a decision to abandon the law "mid-stream" without any clear advocate with standing to argue the law's merits.[23]

The decision of the Administration was equally notable in basing its nondefense decision on a position that had never been embraced by the Supreme Court. The Administration stated that "the President and [the Attorney General] have concluded that classifications based on sexual orientation warrant heightened scrutiny and that, as applied to same-sex couples legally married under state law then, from that perspective, there is no reasonable defense of DOMA."[24] While the Administration acknowledged that a lower standard of review had been applied in prior cases, it insisted that "neither of those decisions reached, let alone resolved, the level of scrutiny issue because in both the Court concluded that the laws could not even survive the more deferential rational basis standard."[25]

While I take the same view as to gay rights, it is not a view that had ever secured a majority of the Supreme Court or even most lower courts. Thus, the Administration was refusing to defend a law based on an interpretation that had thus far remained unsupported by direct precedent. Indeed, the ultimate decision in *Windsor* was a close one with a 5-4 opinion, and the basis for the decision was more nuanced than the one indicated by the Administration. In adopting a nondefense position, the Obama Administration was establishing precedent that Presidents could refuse to defend laws based on unaccepted legal interpretations. This would lead to the question of whether a president could maintain a nondefense postures even with a legal position rejected by lower courts but never rejected by the Supreme Court.

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[23] Indeed, advocates of this presidential power insist that courts cannot be deemed as supreme in the interpretation of laws since "[f]ederal courts only have jurisdiction over cases or controversies, meaning that they cannot issue Article III judgments or opinions when they are not deciding cases or controversies. Yet there will be many situations, many questions, where federal courts cannot opine because there will be no case or controversy." Devins & Prakash, *supra*, 112 Colum. L. Rev. at 530. Indeed, it is true that the executive branch must engage in interpretations as part of its enforcement of laws and, particularly with the narrowing of standing in federal cases, many of these decisions go unchallenged. However, for those of us concerned about the rise of the Fourth Branch, this only increases the concentration of power in the Executive Branch and further undermines the balance in the tripartite system.

[24] http://www.justice.gov/opa/pr/2011/February/11-ag-223.html.

[25] *Id.*

My strongest objection was the failure of the Administration to avoid the untenable position of leaving a federal law without an advocate. That produced a standing dilemma that should never have been allowed to arise. The fact is that there are strong arguments on both sides of this litigation. While I have long been a supporter of same-sex marriage, I felt that the standing barriers created in the recent *Hollingsworth*[26] and *Windsor*[27] cases were grossly unfair to the critics of same-sex marriage and equally inimical to the legal system.[28] It is particularly troubling when this law was signed by a prior president who clearly viewed it (as did Congress) to be a constitutional act. The Court clearly saw the Administration's actions as undermining both the Judicial and Legislative branches:

> "if the Executive's agreement with a plaintiff that a law is unconstitutional is enough to preclude judicial review, then the Supreme Court's primary role in determining the constitutionality of a law that has inflicted real injury on a plaintiff who has brought a justiciable legal claim would become only secondary to the President's. This would undermine the clear dictate of the separation-of-powers principle that "when an Act of Congress is alleged to conflict with the Constitution, '[i]t is emphatically the province and duty of the judicial department to say what the law is.'" . . . Similarly, with respect to the legislative power, when Congress has passed a statute and a President has signed it, it poses grave challenges to the separation of powers for the Executive at a particular moment to be able to nullify Congress' enactment solely on its own initiative and without any determination from the Court."[29]

While the Supreme Court resolved the standing problems in *Windsor* on prudential grounds, the untenable position created by the Administration should have been avoided by the selection of outside counsel to assume the burden of defending the law. While obviously this would have been an action taken in furtherance of the statute by the Administration, it would have allowed the Administration to convey its opposition to the statute while, in the interests of both Congress and the rule of law, ensuring that both sides were adequately represented.

Putting aside the timing and status of the DOMA defense, there remains a principled reason why a President, as well as an Attorney General, may feel that the defense of a statute is fundamentally at odds with his duty toward the Constitution. For

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[26] *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013).

[27] *United States v. Windsor*, 133 S. Ct. 2675 (2013).

[28] I have repeatedly argued to Congress that the narrow rules concerning standing are increasingly preventing worthy constitutional challenges from being heard. I have the honor of representing both Democratic and Republican members of Congress who challenged President Obama's unilateral decision to attack Libya's capitol and armed forces. Jonathan Turley, *Members of Congress Challenge Libyan War in Federal Court*, JONATHAN TURLEY (June 15, 2011), http://jonathanturley.org/2011/06/15/members-of-congress-challenge-libyan-war-in-federal-court/.

[29] *Windsor*, 133 S. Ct. at 2688.

example, if Congress passed a new Sedition Act or a law establishing an official religion, a president could claim a good-faith basis for viewing the law as conflicting with his constitutional duties. While (as noted above) the law should be defended in the interests of all sides being presented for judicial review, a president can decline to directly defend the law. In such cases, the president is caught on the horns of a constitutional dilemma, and the appointment of outside counsel is appropriate to allow the presentation of arguments in favor of the law. After all, the Executive Branch has consistently opposed efforts of Congress to defend laws in court as a usurpation of Executive authority. It should not fight to both bar Congress from such arguments while declining to perform that role to the detriment of these laws.

B. Prioritization Policies.

Every President has faced accusations of slow-walking or under-enforcing laws that he has opposed. Ronald Reagan was accused of undermining a host of environmental laws through the appointment of officials like James Watt and Anne Gorsuch. Likewise, Syracuse University recently found a sharp reduction of prosecutions for financial institution fraud from over 3,000 in 1991 to just 1,365 in 2011.[30] That reduction in the Obama Administration is not deemed a constitutional violation since such cases are heavily imbued with prosecutorial discretion. Indeed, members of Congress often suggest that presidents should not "waste time" on enforcing some laws.[31]

Immigration is again an excellent example of such controversies. Modern presidents have long made deportation a lower priority for enforcement than prosecuting violent illegal immigrants and other provisions. The numbers of such deportations have varied dramatically with George W. Bush deporting a total of 2,012,539 or 251,567 per year, while Bill Clinton deported with an average annual rate of 108,705.[32] During the same period of time, Obama (with 395,774 per year) has actually deported more individuals per year than his predecessor.[33] The level of deportations, however, remains a discretionary decision of an Administration and courts tend to leave disagreements on the level of enforcement as a political question for the legislative and executive branches to resolve. As discussed below, this is in contrast to orders effectively suspending portions of federal immigration law as part of a policy change of the Administration.

C. Signing Statements.

There has already been much discussion of signing statements, particularly during the Administration of George W. Bush.[34] The majority of signing statements are

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[30] See Criminal Prosecutions for Financial Institution Fraud Continue to Fall, TRAC Reports, Syracuse University, available at http://trac.syr.edu/tracreports/crim/267/.

[31] *See, e.g.*, Andrew Cohen, *Sen. Leahy:* Fed Shouldn't 'Waste Time' on State Marijuana Laws, Atlantic, Sept. 3, 2013.

[32] 2011 Yearbook of Immigration Statistics, published by the Office of Immigration Statistics under the Department of Homeland Security (table 39).

[33] *Id.*

[34] *See generally Presidential Signing Statements Under the Bush Administration: A Threat to Checks and Balances and the Rule of Law?*: Hearing Before the H. Comm. on the Judiciary, 110th Cong. 7, 9 (2007).

uncontroversial in that they amplify policies or celebrate accomplishments or reaffirm objectives connected to the legislation. However, some signing statements have been used to inform agencies of an interpretation that seems at odds with the language and intent of Congress – often after an Administration has failed to get its way with the legislative branch. Signing statements may merge with nonenforcement orders when a president claims a provision is unconstitutional and unenforceable.

James Monroe is generally credited with the first signing statement.[35] Like many controversial practices, it started in a rather routine and harmless fashion with Monroe stressing how the law was to be administered.[36] Given his confrontational and at times imperial approach to the presidency, it is not surprising that the first defiant signing statement came with Andrew Jackson who did not want a road built from Detroit to Chicago. Jackson instructed his Administration to build the road but to stop before Chicago. Such statements were condemned at the time on the grounds that they violated the separation of powers and usurped the authority of the legislative branch. One of the most interesting early confrontations occurred between President John Tyler and Speaker of the House, John Quincy Adams. When Tyler wrote a signing statement rejecting certain provisions of a political apportionment bill, Adams rejected the signing statement as an "extraneous document" that constituted a "defacement of the public records and archives."[37] Indeed, Adams was right. Such statements are extraneous and do not constitute "law." They, however, have such an effect when a president uses them to order the disregard or effective line veto of a duly enacted law.

The most significant transformation of these statements came with Ronald Reagan. Then Attorney General Ed Meese sought to make such statements integral rather than extraneous by ensuring the West Publishing Company would print such statements with these laws as if they were a binding amendment or interpretation of the laws. The Supreme Court was viewed as undermining the authority of Congress further in *INS v. Chadha* and later cases by referring to signing statements and casually noting that the president will use such statements to decline to enforce certain objectionable provisions in laws.[38] Soon, presidents were adding hundreds of such statements to "Executive legislative history" accounts as if they were an addendum to legislation.

To the extent that signing statements order the nonenforcement of legislation, it raises serious constitutional questions. Some signing statements have led to later reversals as in Reagan's dispute over the Competition in Contracting Act of 1984 or congressional reversals as in the HIV-positive personnel provision of the National Defense Authorization Act for Fiscal Year 1996 in the Clinton Administration. To the

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[35] T.J. Halstead, Cong. Research Serv. Report for Cong., Presidential Signing Statements: Constitutional and Institutional Implications 2 (2007). http://www.fas.org/sgp/crs/natsec/RL33667.pdf.

[36] Christopher N. May, Presidential Defiance of "Unconstitutional" Laws 73 (1998).

[37] Am. Bar Ass'n, Task Force on Presidential Signing Statements and the Separation of Powers Doctrine 7 (2006).

[38] In striking down the legislative veto in *Chadha*, the Court noted that "11 Presidents, from Mr. Wilson through Mr. Reagan, who have been presented with this issue have gone on record at some point to challenge congressional vetoes as unconstitutional." 462 U.S. 919, 942 fn. 13 (1983).

extent that these disputes are not resolved through inter-branch compromise, they should be resolved through judicial review (though, again, the dysfunctionally narrow standing rules can inhibit such review). Where the signing statements establish nonenforcement orders, we are left with a fundamental challenge to legislative authority. These confrontations can be made worse by the perfect constitutional storm of a signing statement that imposes a nonenforcement order, which in turn results in a nondefense order in litigation.

George Bush most dramatically diverted from his predecessors by issuing signing statements that "interpreted" statutes in ways that effectively amended or negated provisions. Ironically, one of the greatest critics of such statements was Barack Obama, who pledged to end the practice as unconstitutional. Yet, Obama would be criticized for not only continuing such statements but actually barring enforcement by agencies.

D. Nonenforcement Orders.

The three branches are set in a tripartite system designed to hold each in a type of Newtonian orbit. Under this system, no branch ideally has enough power to govern alone – they are forced into cooperative agreements and coexistence. Nonenforcement orders challenge this arrangement by imposing a type of presidential veto extrinsic to the legislative process. The legitimacy of such orders has long been challenged as an extraconstitutional measure.

Yet, since Thomas Jefferson, Presidents have asserted the discretion not to enforce laws that they deemed unconstitutional. Jefferson took a stand against the Sedition Act that was used for many blatant abuses against political enemies in the early Republic. Jefferson cited his oath to protect the Constitution compelling him to act to "arrest [the] execution" of the law at "every stage."[39] Jefferson's stand represented the strongest basis for nonenforcement in a law that was used against political opponents and free speech. However, many presidents object to the constitutionality of a law, often in defense of expansive views of executive power. Those presidential arguments have resulted in rejection before the Supreme Court – reaffirming objections that presidents are negating legislative authority in violation of the separation of powers.

Other presidents would follow suit, particularly in resisting claimed intrusions on executive authority. President Wilson refused to comply with a law barring his removal of postmasters without Senate approval. While three justices (including Brandeis and Holmes) dissented, the Administration prevailed in *Myers v. United States*.[40] However, presidents have also been wrong in such judgments. This was the case with Gerald Ford, who refused to enforce the 1974 amendment to the Federal Election Campaign Act of 1971, which placed legal limits on the campaign contributions. Ford vetoed the law on first amendment grounds, but Congress overrode the veto. Ford then refused to enforce

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[39] Letter from Thomas Jefferson to Abigail Adams (July 22, 1804), *in* 1 THE ADAMS-JEFFERSON LETTERS 274, 275-76 (Lester J. Cappon ed., 1959); *see also* Saikrishna Bangalore Prakash, *The Executive's Duty To Disregard Unconstitutional Laws*, 96 Geo. L.J. 1613 (2008).

[40] 272 U.S. 52 (1926).

those provisions[41] and then Robert Bork argued against the FECA provisions before the Court. However, the Court rejected Ford's arguments on that part of the law.[42]

Likewise, Ronald Reagan refused to execute the Independent Counsel law on the grounds of separation of powers – an ironic position given his own refusal to respect a duly enacted law of Congress. The Supreme Court ruled 7-1 that Reagan was wrong in *Morrison v. Olson*.[43] In the same fashion, George H. W. Bush opposed affirmative action policies of the FCC only to be rejected in *Metro Broadcasting v. FCC*.[44] While this was in turn overruled in *Adarand Constructors, Inc. v. Peña*,[45] it was clearly a close constitutional question. For presidents to block enforcement of a law creates uncertainty as to the legitimacy and finality of enactments.

I cannot agree with Abner Mikva who claimed as White House Counsel for Clinton that it is "uncontroversial" that "the President may appropriately decline to enforce a statute that he views as unconstitutional."[46] Mikva cites virtually nothing in terms of the text or intent of the Framers. Rather, he cites first and foremost the silence of the Court in cases like *Myers* where "the Court sustained the President's view that the statute at issue was unconstitutional without any member of the Court suggesting that the President had acted improperly in refusing to abide by the statute."[47] This "implicit[] vindication" is cited by Mikva as proof of the authority to block the enforcement of federal statutes.[48]

There has of course been obvious controversy over the right of a president to refuse to execute federal laws in light of express language requiring his faithful enforcement of such laws. Moreover, the allowance for nonenforcement orders undermines the express process of legislation detailed in Article I and Article II. Thus, a president like Clinton can sign the National Defense Authorization Act for Fiscal Year 1996, forego a constitutional veto, and then declare a constructive post-enactment veto in a signing statement. While I happened to agree with Clinton on his opposition of the mandatory discharge of HIV-positive service members, a conscious decision was made to sign the legislation under the expectation that he could achieve the same effect of a veto through a nonenforcement order. Of course, it did not have the same effect

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41 Gerald Ford, Statement on the Federal Election Campaign Act Amendments of 1974 (Oct. 15, 1974), http://www.presidency.ucsb.edu/ws/?pid=4464#axzz2gIvcVm5z.

42 *Buckley v. Valeo*, 424 U.S. 1 (1976).

43 487 U.S. 654 (1988).

44 497 U.S. 547 (1990).

45 515 U.S. 200 (1995).

46 Memorandum for the Honorable Abner J. Mikva, Counsel to the President, Nov. 2, 1994 (found at http://www.justice.gov/olc/nonexcut.htm).

47 *Id.*

48 Not surprisingly, there has been a series of opinions out of the Executive Branch supporting a president's right to refuse to execute laws. For example, Attorney General Civiletti insisted that "*Myers* holds that the President's constitutional duty does not require him to execute unconstitutional statutes; nor does it require him to execute them provisionally, against the day that they are declared unconstitutional by the courts." *The Attorney General's Duty to Defend and Enforce Constitutionally Objectionable Legislation*, 4A Op. O.L.C. 55, 59 (1980).

constitutionally. An actual veto would have resulted in additional congressional debate and a separate vote to override the veto. The nonenforcement order made the legislative process meaningless by negating the provisions in a post-enactment order.

III. NONENFORCEMENT POLICIES UNDER THE OBAMA ADMINISTRATION

From Internet gambling to educational waivers to immigration deportations to health care decisions, the Obama Administration has been unilaterally ordering major changes in federal law with the notable exclusion of Congress. Many of these changes have been defended as discretionary acts or mere interpretations of existing law. However, they fit an undeniable pattern of circumventing Congress in the creation of new major standards, exceptions, or outright nullifications. What is most striking about these areas is that they are precisely the type of controversial questions designed for the open and deliberative legislative process. The unilateral imposition of new rules robs the system of its stabilizing characteristics in dealing with factional divisions. While Attorney General Eric Holder has recognized that the judicial branch is "the final arbiter of ... constitutional claims,"[49] he appears less committed to the concept of the legislative branch's inherent authority. The classic circumvention of the Faithful Executive Clause is to say that it necessarily is limited to only constitutional laws. However, this argument only begs the question of who determines the unconstitutionality of a law. If it is left to a President, any such law could be claimed as presumptively unconstitutional. Indeed, if a President views a law as unconstitutional, it is not clear why the President could not still refuse to enforce it. This inherent power is often reinforced by reference to the President's oath to "preserve, protect, and defend" the Constitution – making the enforcement of a law deemed unconstitutional a violation of his oath – the Jeffersonian position on the Sedition Act.

Some academics posit that each branch has an interpretive function and that the President need not yield to the rivaling interpretation of Congress or even courts. As was recently argued in one law review, "the Constitution nowhere anoints any entity or branch as the final arbiter of the meaning of the laws or the Constitution."[50] This view, however, challenges the stability achieved after *Marbury v. Madison*[51] since it necessarily leads to a position that "[t]he Constitution never marks the Supreme Court supreme in its exposition of the Constitution over Presidents, Congress, the states, or the people."[52] This is a long-standing debate that is not without support given the absence of a clear statement in Article III making the Supreme Court the final arbiter in such disputes.[53] However, regardless of the debate over Chief Justice Marshall's basis for his

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[49] Letter from Eric H. Holder, Jr., Att'y Gen. of the United States, to Hon. John H. Boehner, Speaker of the House (Feb. 23, 2011) at 5.

[50] Devins & Prakash, *supra*, 112 Colum. L. Rev. at 526.

[51] *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

[52] *Id.* at 529.

[53] *Id.* ("In sum, to imagine that the Constitution marks the Supreme Court as supreme in its exposition of the Constitution and laws of the United States, one has to believe two implausible propositions. One has to presume that a Constitution that never

holding, *Marbur* established a key stabilizing element by bringing finality to interpretive debates, particularly over controversies over the separation of powers. While the Administration avoids acknowledging the implications of its policy, it does inevitably challenge this foundational principle of judicial authority. The result is a view that not only allows the circumvention of the legislative powers but the negation of judicial review. That leaves such disputes to a matter of political strength and reduces the tripartite system to something akin to a continual game of chicken between branches.

While political divisions would normally be a reason to leave a matter to the legislative process to resolve, it is increasingly being cited as a rationale for circumventing Congress. Thus, citing gridlock and the failure to correct the law, President Obama has granted widespread waivers to states under the No Child Left Behind Act, effectively nullifying the law in the view of critics.[54] This has been denounced as a circumvention of Congress with the creation of new criteria or conditions by the Administration for schools to receive the waivers. This new system is entirely the product of an intrabranch process in circumvention of Congress. Likewise, the Administration effectively flipped the interpretation of the Wire Act, 18 U.S.C. § 1084, from years of prohibiting Internet gambling to a limited bar just on sports betting.[55] The interpretation effectively flipped the long-standing meaning of the federal law – an interpretation favored by many states and lobbyists in the industry. After years of maintaining a consistent interpretation, the 180 degree change transformed the Act into a vastly different law that potentially allowed billions of dollars' worth of gambling operations on the Internet. While defendable as an interpretative function, it was a radical change made without congressional hearings or debate.

A different rationale was used for delaying enforcement of the employer mandate set by Congress in the Affordable Care Act. Once again, this remains one of the most important and divisive questions facing the political system. Yet, the Administration cited deference to agencies in implementing regulations and establishing standards for tax and other provisions. Despite having four years to implement the law and the statutorily-set deadline, the Administration insisted that Congress cannot hold agencies to such schedules. The law itself unambiguously sets January 1, 2014 as the critical date[56] – a matter of considerable debate within Congress during deliberations. There is no express power given to change that date. Yet, Mark J. Mazur, the Assistant Secretary for Tax Policy at the U.S. Department of the Treasury, insisted that such mandatory dates can be

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grants the Supreme Court a general power to decide all legal questions nonetheless cedes the Court a power to definitively answer such questions in some instances. And one has to discover, buried deep within the Constitution's interstices, an interbranch supremacy on constitutional and legal interpretation even though the Constitution contains nary a word hinting at such dominance.")

[54] Motoko Rich, "No Child" Law Whittled Down By The White House, New York Times, July 6, 2012.

[55] Nathan Vardi, Department of Justice Flip-Flops On Internet Gambling, Forbes, Dec. 12, 2011.

[56] This date applies to the Employer Mandate (26 U.S.C. § 4980H) and the Individual Mandate (id. § 5000A). Pub. L. No. 111-148, 124 Stat. 119.

ignored by the Administration, which will unilaterally decide such questions.[57] It is another example of the new independence of the "Fourth Branch" and how specific mandates can now be disregarded in the haze of agency deference. The Congress could not have been more clear as to the activation date for the law, but the position of the Administration would make such provisions merely advisory and subject to the agreement of the President.

The Administration's basis for negating statutory provisions lost even the pretense of reasoned authority in the immigration area.[58] There has long been a general consensus that a president cannot refuse to enforce a law that is considered constitutionally sound. Thus, in his general support for nonenforcement orders, former Attorney General Benjamin Civiletti acknowledged that "[t]he President has no 'dispensing power,'" meaning that the President and his subordinates "may not lawfully defy an Act of Congress if the Act is constitutional. . . . In those rare instances in which the Executive may lawfully act in contravention of a statute, it is the Constitution that dispenses with the operation of the statute. The Executive cannot."[59] Yet, in June 2012, President Obama appeared to exercise precisely this type of "dispensing power" in issuing an order to federal agencies that the Administration would no longer deport individuals who came to this country illegally as children despite the fact that federal law mandates such deportation. In disregarding the statutory language, the Administration rolled out a new alternative policy that individuals can qualify for "deferred action" if they had come to the country before the age of 16, have no criminal history, resided in the U.S. for at least five consecutive years, and are either a student or have already graduated from high school, or earned an equivalent GED, or served in the military. Yet, this new, detailed system is the product not of Congress but the internal deliberations of a federal agency. While claimed to simply be an act of prosecutorial discretion,[60] it constitutes a new and alternative immigration process for these individuals.

The Administration again circumvented Congress in August of this year with the announcement that deportation would no longer occur for any primary provider for any

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[57] Mark J. Mazur, Continuing to Implement the ACA in a Careful, Thoughtful Manner, U.S. Department of the Treasury, July 2, 2013 (available at http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx).

[58] There was also an immigration component of the controversy over DOMA. Peter Baker, *For Obama, Tricky Balancing Act in Enforcing Defense of Marriage Act*, New York Times (Mar. 28, 2013). Before the ruling of the Supreme Court striking down DOMA, the Department of Homeland Security announced that it would no longer enforce DOMA in its immigration decision. In August 2011, Obama's DHS announced it would no longer deport the noncitizen spouses of gay Americans in conflict with DOMA.

[59] The Attorney General's Duty to Defend and Enforce Constitutionally Objectionable Legislation, 4A Op. O.L.C. 55 (1980) (opinion of Attorney General Civiletti.

[60] Memorandum of Janet Napolitano, Secretary of Homeland Security, June 15, 2012, (available at http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf).

minor child or the parent or guardian of a child who is a U.S. citizen or legal permanent resident. Once again, it is not clear what Congress could do to counter such claims of discretion any more than it could set the date for the implementation of the ACA. The federal law mandates deportation for individuals in the country illegally. While prosecutorial discretion has been cited in individual case decisions, the Administration was using it to nullify the application of federal law to hundreds of thousands, if not millions of individuals. Once again, one's personal view of the merits of such an exception should not be the focus, or even a part, of the analysis. In ordering this blanket exception, President Obama was nullifying part of a law that he simply disagreed with. There is no claim of unconstitutionality. It is a raw example of the use of a "dispensing power" over federal law. It is difficult to discern any definition of the faithful execution of the laws that would include the blanket suspension or nullification of key provisions. What the immigration order reflects is a policy disagreement with Congress. However, the time and place for such disagreements is found in the legislative process before enactment. If a president can claim sweeping discretion to suspend key federal laws, the entire legislative process becomes little more than a pretense. What is most striking is the willingness of some to accept this transparent effort to rewrite the immigration law after the failure to pass the DREAM Act containing some of the same reforms.

A few weeks ago, President Obama again invoked his inherent power in declaring that individuals with pre-existing policies could retain those policies for a year despite the fact that they do not conform with the requirements of the ACA.[61] The ACA expressly sets the date for compliance that penalizes non-exempt individuals who do not maintain "minimum essential" health insurance coverage.[62] Those non-compliant individuals are subject to a "[s]hared responsibility payment."[63] By saying that states can allow individuals to remain non-compliant after the statutory deadline, President Obama inserted a constructive exemption that would have been the subject of intense political debate at the time of the deliberations.

Notably, the unilateral change occurred when legislation addressing this issue was being debated in Congress. Moreover, this change was made after an outcry over what many viewed as the central selling point of the President's during the debate over the ACA: suggesting that, if people liked their current policies, they would be allowed to keep them. After securing passage of the ACA, however, on a thin vote margin, many accused the President of a bait-and-switch when millions lost their policies. I will leave others to work through the merits of that controversy. For my purposes, I am only interested in the fact that a key issue discussed during the debate over the legislation was unilaterally altered after passage. This is an obviously important part of the debate. The law does not expressly give the President the authority to waive the application of the provisions for selected groups. To the extent that the President was claiming that he had the authority to amend the law in this way, I fail again to see the legal basis for such authority.

Notably, the unilateral changes made to laws like the ACA are not done (as with

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[61] Juliet Eilperin, Amy Goldstein and Lena H. Sun, *Obama Announces Change To Address Health Insurance Cancellations*, Wash. Post, Nov. 14, 2013.

[62] 26 U.S.C. § 5000A.

[63] 26 U.S.C. § 5000A(b).

Jefferson's refusal to enforce the Sedition Act) in defiance of an act viewed as unconstitutional and abusive. Rather, President Obama has invoked a far broader authority to tailor laws based on his judgment and discretion. This may be done ostensibly to "improve" the law as with the one-year waiver for individual policies or to mitigate the hardship of a law as with the immigration law. These happen to be areas of great political division in the country as well as substantial opposition to the President's policies in Congress. Many applauded the President's transcending politics by ordering such unilateral action without considering the implications of such inherent authority for the system as a whole.

Once again, it is important to divorce the subject of such legislation or the identity of the president from the constitutional analysis. The circumvention of the legislative process not only undermines the authority of this branch but destabilizes the tripartite system as a whole. If President Obama can achieve the same result of legislation by executive fiat, future presidents could do the same in negating environmental or discrimination or consumer protection laws. Such practices further invest the Administrative State with a degree of insularity and independence that poses an obvious danger to liberty interests protected by divided government. This danger is made all the more menacing by the clear assumption by the Executive Branch that artificially narrow standing rules will insulate the orders from judicial scrutiny and relief. With Congress so marginalized and courts so passive, the Fourth Branch threatens to become a government unto itself for all practical purposes.

IV. CONCLUSION

In Federalist No. 51, James Madison explained the essence of the separation of powers – and the expected defense of each branch of its constitutional prerogatives and privileges:

> "But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition."

A provision was once made for the defense of this branch against the type of "encroachments" discussed in this hearing. It was found in the power of Congress to establish federal law and the obligation of the Executive Branch to faithfully execute those laws. For decades, however, Congress has allowed its core authority to drain into a fourth branch of federal agencies with increasing insularity and independence. It has left Congress intact but inconsequential in some disputes. If this trend continues unabated, Congress will be left like some Maginot Line on the constitutional landscape – a sad relic of a once tripartite system of equal branches.

There remain legitimate questions over when a President can refuse to defend or enforce a statute and whether the former duty is a subset of the latter duty. As an academic deeply concerned over the concentration of power under the modern presidency,

I tend to minimize such authority in favor of a more formalist division of powers.[64] Functionalists take a clearly more fluid approach to such powers. However, I do not view the recent controversies as "close questions." The actions of the Obama Administration challenge core principles of the separation of powers and lack meaningful limiting principles for future executive orders.

Clearly, these are times of bitter and intractable divisions between the parties. It is not the first time such divisions have emerged in Congress. However, Madison and others believed that petty partisanship would ultimately yield to common institutional interests when faced with the "danger of attack." After all, members have a common article of faith. It is Article I of the Constitution and the words "All legislative powers herein granted shall be vested in a Congress of the United States."

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64 *See generally* Turley, Age of Regulation, *supra*.

Senator VITTER. That will underscore that I quoted it completely accurately and in the proper context. There is no narrow context in which it was given.

My questions in the second round are for Dr. Burke. I really share a lot of the concerns about sound science that we have talked about. I have been involved in that in a lot of different contexts including the NAS recommendations, recommendations on formaldehyde. Do you think congressional oversight in this area including that instance but others has been helpful in improving EPA's science?

Mr. BURKE. Senator, I think you and I share the same goals in improving EPA's science. As a member of the National Academy panels and the chair of a major panel, I am very aware of your work to promote better science and of the tremendous positive impacts of the formaldehyde report on changing the way EPA conducts their risk analysis for their IRIS reports. We agree.

Senator VITTER. I appreciate hearing that. Will you commit specifically to helping work to implement those NAS recommendations with regard to how EPA approaches its scientific work in general?

Mr. BURKE. If confirmed, I look forward to that.

Senator VITTER. As you can tell from some of my colleagues' comments, we think a particularly important example of how science can be used or abused is the ongoing debate about fracking. Would you commit in particular to help apply NAS and other sound recommendations regarding the right way to do sound science to any science with regard to fracking at EPA?

Mr. BURKE. Yes, Senator.

Senator VITTER. I also completely share the comments of my colleague from Arkansas about data transparency. I don't think anybody wants to disclose private identifiers or private health or medical information but I believe in virtually every case involved in these studies there is a way to mask that sort of identifying information and therefore have the best of both worlds, absolutely maintain the privacy of any individual patient and release the data underlying proposed regulations scrubbed of those identifiers.

Am I missing something or do you largely agree with that?

Mr. BURKE. I largely agree with it but I want to talk a little bit from personal experience because even right here in Washington, DC, I have done community level studies. I just want to give you an example.

I mentioned I did childhood cancer clusters. Sometimes when we are working in a small community with very small numbers, it is very difficult to make everything available because we wouldn't want to violate an individual child's right of privacy about their disease or a family's confidentiality. There are always measures that we take to protect that individual.

For the large part, I absolutely agree with you. We can do a much better job in making scientific data available from our research studies.

Senator VITTER. Great. In reaction to this discussion we have had for a couple of years now, President Obama actually on May 9 of this year, issued his Open Data Executive Order that instructs Federal agencies to make that data public after it scrubs it of per-

sonal identifiers. Are you aware of that Executive Order and do you agree with that?

Mr. BURKE. Although I don't know the specific details of that, I know that is the direction the Administration is moving. I look forward to participating in that and working with other members of the Administration, if confirmed, and also my colleagues in the scientific community to make progress in that area.

Senator VITTER. Thank you very much.

Thank you, Madam Chair.

Senator BOXER. This is really good that you got the whole thing here with the paper and all the cites because the only two cites I have come across on the two issues is Defense of Marriage Act and Immigration but I think maybe there is something about Environment in here. I haven't seen it so I look forward to reading the entire thing.

Senator VITTER. We can continue this debate whenever you like. My point is he was making statements in a broad context and that was certainly not a criticism from the Left. He says in this he actually agrees with a lot of the policies like the immigration policies, like the policies behind non-enforcement of the Defense of Marriage Act, but he disagrees with the Administration going beyond its authority.

Senator BOXER. I understand but I found it fascinating that the only cases I saw as I looked at all the background which you are putting in the record, which I will have my counsel do a better job than I did, a cursory review, is the backup papers because he is very general. He calls it the [unintelligible] presidency and all that but then he cites gay rights and immigration and says that the President is harming those issues. It is really interesting to read but sometimes the far Left and the far Right come together.

Here is the thing. I went back because Senator Vitter has every right to criticize me as Chairman for putting too many people here in front of us. I went back and I thanked Senator Inhofe for recalling that he did have one time where he had seven people in a row. Actually, it happened twice and I am going to put in the record those examples—one in 2005, one in 2006 and then another where there were five people in 2005.

[The referenced information was not received at time of print.]

Senator BOXER. It is just not true and having four people here, I think is quite manageable. I think we are astute enough to question each and every one of you.

I just want to say in closing I am sorry that you saw some tensions here but that is the way it is. That is what democracy is. The minority has every right to complain and the majority has every right to defend themselves and the way they conduct business.

We are also going to produce for the record the number of hearings we have held since President Obama came into office comparing it to when President Bush was in office because I think it is important what we are hearing here constantly, that this Committee is not looking at the issues. It simply isn't true. What you will find is we have done much more.

The facts are stubborn things but they will be put in the record.

[The referenced information was not received at time of print.]

Senator BOXER. I want to thank each and every one of you. It is a sacrifice, it is, to put yourself before the questioners and it is a sacrifice for your families to have to hear questions that are sometimes less than flattering but I got to tell you, it is worth it and I have a great feeling about each and every one of you because you all are so very qualified.

I personally, and I know all of us are, grateful to you for putting yourselves out there.

I have a number of questions. Please get your answers to the questions by January 4 and I look forward to moving your nominations expeditiously.

Thank you very much.

Senator VITTER. Madam Chairman, if I could respond to some of your latter comments?

Senator BOXER. We stand adjourned.

[Whereupon, at 4:24 p.m., the Committee was adjourned.]

[An additional statement submitted for the record follows:]

STATEMENT OF HON. THOMAS R. CARPER,
U.S. SENATOR FROM THE STATE OF DELAWARE

Before I begin, I would like to warmly welcome all of our nominees to today's hearing and thank you for willingness to serve and go through the nomination process. As Chairman of the Homeland Security and Government Affairs Committee, I know how time consuming the nomination process can be for not only the nominee, but also the Committee. That's why I would also like to thank the Madam Chairman for her tireless work to move the nominees in our Committee's jurisdiction—like the ones before us today—forward in a timely fashion.

Today's hearing highlights the fact that we are lacking critical leadership in numerous positions in just about every agency, undermining the effectiveness of our Government. This has been a problem that has plagued the executive branch through both Democratic and Republican administrations—a problem so prevalent that I've started referring to it as "executive branch Swiss cheese." While Congress and the Administration have taken steps to address this problem, the fact remains that we still have more work to do to ensure that we have talented people in place to make critical decisions.

That's one of the reasons why today's confirmation hearing is so important. I believe all of the nominees before us are extremely qualified and look forward to working with all of them in their respective agencies if confirmed.

I especially look forward to working with Ms. Rhea Sun Suh, who, if confirmed, will oversee two very important divisions within the Department of Interior—the Fish and Wildlife Service and the National Park Service. Wildlife conservation is important to me and to all Delawareans, and we've been particularly thankful to the Fish and Wildlife Service for undertaking extensive plans to overhaul Prime Hook National Wildlife Refuge.

The dynamic environment within the Refuge and the wildlife that depend on this habitat are extremely vulnerable to rising seas and coastal storms and have been badly damaged by coastal storms in recent years. Along with the rest of our Delegation and Governor Markell, I will look forward to continuing our close relationship with the Fish and Wildlife Service—and working with Ms. Suh if confirmed—as we implement the Refuge's new Conservation Plan.

And if confirmed, Ms. Suh will also be working with Director Jon Jarvis to oversee the National Park Service—which, as many of you know, is of most interest to me. After a 10-year effort, Delaware finally became part of the National Park System in April of this year with the designation of the First State National Monument.

Director Jarvis has already assigned a superintendent to the First State National Monument—Delaware native Mr. Russ Smith. Mr. Smith has already hit the ground running; I do not believe there could have been a better choice for our first superintendent.

If confirmed, Ms. Suh, I look forward to working with you to ensure the First State National Monument is another success story of the National Park System despite the limited budgets. I also plan on continuing legislative efforts to authorize

a national park in place of the national monument—and look forward to working with you on these efforts.

Thank you again to Ms. Suh and the other nominees before us today.