Then there is his opinion of money in politics. Our Constitution starts with those beautiful three words, ''We the People,'' not ''We the powerful who can spend billions of dollars in third-party campaigns to have a megaphone the size of a stadium sound system.'' No. Jefferson said, for us to really secure the will of the people, the individuals have to have essentially an equal voice.

This individual who is before us today doesn't like that whole concept of equal voice. He doesn't like the mission statement of the Constitution of the United States of America. He wants government by and for the powerful and the privileged and nothing less. Therefore, he should go and serve in some foreign country that doesn't have a vision of government of, by, and for the people. He certainly doesn't belong in our court system in the United States of America.

There is so much more that people have described, including his writing in support of the ''lock her up'' chants at last summer's Republican convention, his trafficking in birtherism, and more and more.

I will be vehemently opposing this confirmation. I urge my colleagues to do the same. Let's fight for the vision. Let's fight for the ''We the People'' mission on which our Constitution was founded and that we have the responsibility to uphold.

The PRESIDING OFFICER. The Senator from Massachusetts.

Ms. WARREN. Mr. President, so far this year President Trump and Senate Republicans have selected a long list of Wall Street insiders, corporate CEOs, lobbyists, and radical rightwing ideologues to run the Federal Government, but the Republicans haven't stopped there. They are also working to fill vacancies on the courts with the same kind of people—nominees who reflect pro-corporate, radically conservative views that will threaten the principle of equal justice under law.

That is not coincidence. Powerful rightwing groups have had their sights set on the courts for decades, and over the past 8 years they have launched a relentless campaign to capture our courts. During the Obama administration, a key part of their strategy was stopping fair, mainstream nominees with diverse, professional backgrounds from becoming judges. Our Federal courts suffered the consequences. Vacancies sat open for months. They sat open for years, and cases piled up on the desks of overworked judges.

Now, with President Trump in the White House and Senate Republicans are in control of the Senate, those powerful interests see an unprecedented opportunity to reshape our courts in ways that will benefit billionaires and giant corporations for decades to come. Now they see their chance to stack the courts with radical, rightwing, pro-Big Business conservatives.

John Bush, President Trump's nominee to sit on the Sixth Circuit Court of Appeals, is one of those radical, rightwing, pro-business conservatives. Mr. Bush is not just a member of the ultraconservative Federalist Society. He is the cofounder and 20-year president of the Louisville chapter. During his career, he has earned a reputation for fighting for the big guys. For example, Mr. Bush supports weakening our campaign finance laws so giant corporations and wealthy individuals can flood our elections with unlimited contributions and buy the officials they want. I believe Mr. Bush's pro-corporate views call his qualifications to the Federal bench into question. I do not understand how he can be fair and impartial when his billionaire buddies show up in court.

My concern about Mr. Bush runs much deeper. He has demonstrated a level of disrespect for other people that flatly disqualifies him for a lifetime appointment to the Federal bench. Here is just a glimpse of what the man nominated to be a Federal judge has written and said in public:

In a blog post, he called for then-House Speaker NANCY PELOSI to be gagged.

In another blog post, Mr. Bush mocked policies that recognize same-sex parents saying that ''[i]t's just like the government to decide it needs to decide something like which parent is number one and which parent is number two.''

In a speech in Louisville, he repeated a quote from a late journalist saying: ''I come here every year, let me tell you one thing I've learned—this is no town to be giving people the impression you're some kind of. . . .'' He finished the quote with an anti-gay slur that begins with an ''f.''

There it is: dismissive, demeaning, and downright ugly. If that word makes you furious, or if you believe that term is hurtful, then think about what it means that this is the man President Trump has put forward to be a Federal judge to sit in judgment on others. Whatever his other qualifications, Mr. Bush has aggressively and conclusively disqualified himself to be a judge. I think Mr. Bush knows that.

In his hearing before the Judiciary Committee, Mr. Bush was not keen to defend what he said. When asked about those hateful statements, he ducked and dodged like a prize fighter. He played that old game we have seen before—the ''I promise to be a fair and impartial judge if I am confirmed'' game. He is selling, and I am not buying. Mr. Bush should be embarrassed to defend those statements. They are shameful.

Senator MCCONNELL might defend this man, calling those statements, as he did, ''personal views about politics,'' but I call them hateful views that disqualify him for a lifetime appointment as a Federal judge. Yes, decent, reasonable people can disagree on policy, and decent, reasonable people can disagree on legal interpretation, but decent, reasonable people should not disagree on basic norms that all judges in our Federal court should abide by. Anyone who thinks it is OK to use anti-gay slurs and to tell anti-LGBTQ jokes is disqualified to be a Federal judge, period.

No Senator—Republican or Democratic—should be willing to confirm such a man. Our courts have one duty: to dispense equal justice under the law. No one can have confidence that Mr. Bush could fulfill such a task, and no Senator should be willing to give Mr. Bush a seat on the court of appeals of the United States of America.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMOVAL OF NOMINATION OBJECTION

Mr. GRASSLEY. Mr. President, on June 20, 2017, I notified the majority leader of my intent to object to any unanimous consent request relating to the nomination of Steven A. Engel, of the District of Columbia, to be the Assistant Attorney General for the U.S. Department of Justice Office of Legal Counsel, until he adequately responded to my questions regarding his views on the OLC's May 1, 2017, opinion, ''Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch.''

As I have previously noted, the opinion erroneously states that individual Members of Congress are not constitutionally authorized to conduct oversight. It creates a false distinction between oversight and what it calls non-oversight requests. It relegates requests from individual Members for information from the executive branch to Freedom of Information Act requests. I have written a letter to the President requesting that the OLC opinion be rescinded. The executive branch should properly recognize that individual Members of Congress have a constitutional role in seeking information from the executive branch and should work to voluntarily accommodate those requests.

My June 12, 2017, letter to Mr. Engel asked him several questions about the opinion, including whether the opinion

met the OLC's own internal standards requiring impartial analysis, whether individual Members of Congress are ''authorized'' to seek information from the executive branch, and what level of deference the executive branch should provide to individual Member requests.

Mr. Engel promptly responded to my letter on June 23, 2017, and to a second June 27, 2017, followup letter on July 12, 2017. I ask unanimous consent that Mr. Engel's responses be placed in the RECORD following my remarks.

I also met with Mr. Engel in my office on July 19, 2017, to further discuss and clarify his views on the authority of individual Members to request information from the executive branch. Mr. Engel's responses, both in writing and in person, indicate that he agrees each Member, whether or not a chairman of a committee, is a constitutional officer entitled to the respect and best efforts of the executive branch to respond to his or her requests for information to the extent permitted by law. He also agreed: No. 1, that the May 1, 2017, OLC opinion on this topic failed to consider adverse legal authority, specifically *Murphy* v. *Dep't of the Army*, 613 F.2d 1151 (D.C. Cir. 1979); and No. 2, that, if confirmed, he would review the opinion; and No. 3, consider whether a more complete analysis of the issue is necessary.

I am satisfied that Mr. Engel understands the obligation of all Members of Congress to seek executive branch information to carry out their constitutional responsibilities and the obligation of the executive branch to respect that function and seek comity between the branches. Therefore, I agree a vote should be scheduled on his nomination, and I wish him the very best in his new role.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Washington, DC, June 23, 2017.

Hon. CHARLES E. GRASSLEY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN GRASSLEY: I write in response to your June 12, 2017 letter concerning the May 1, 2017 letter opinion of the Office of Legal Counsel (''OLC''). I appreciate your interest in ensuring that Members of Congress are able to obtain the information necessary to fulfill their constitutional responsibilities, as well as your attention to ensuring that OLC opinions provide candid, independent, and principled legal advice. If I am confirmed as Assistant Attorney General, I will be committed to ensuring that OLC complies with these principles.

I provide here my responses to the seven questions in your June 12 Letter.

1. Are you familiar with the May 1, 2017 OLC opinion?

Response: I am not currently at the Department of Justice, but I read the May 1, 2017 opinion shortly after it was published.

2. In your view, does this opinion meet the standards described in OLC guidance that require impartial analysis of competing authorities or authorities that may challenge an opinion's conclusions? If so, can you please point to the portion of the opinion which you believe fully discusses contrary authority or arguments for non-Chairmen's need for information from the Executive Branch to carry out their constitutional function?

Response: Because I am not currently at the Department of Justice, I have not had occasion to review all of the underlying precedents that may bear upon the May 1, 2017 letter opinion. I agree that an OLC opinion should candidly and fairly address all relevant legal sources, and there are judgment calls that must be made in determining what should be included, particularly with respect to letter opinions (which tend to be shorter and less formal). With respect to the May 1, 2017 opinion, I do agree that Murphy v. Dep't of the Army, 613 F.2d 1151 (D.C. Cir. 1979), which was cited in your June 7, 2017 letter to the President, may bear upon the issues addressed in the May 1, 2017 opinion. I understand that in 1980, and again in 1984, the Department of Justice advised that, with respect to FOIA practices, the Murphy decision did not eliminate the legal distinction between requests made by Committee Chairmen and those made by individual Members of Congress. In my opinion, it would have been useful for OLC's letter opinion to address the Department's current understanding of the Murphy decision in the context of congressional oversight.

3. Do you believe that individual Members of Congress, who are not Chairmen of committees, are ''authorized'' to seek information from the Executive Branch to inform their participation in the legislative powers of Congress? Do you believe they are authorized by the Constitution? Why or why not? Do you believe that they are authorized by Congress? Why or why not?

Response: The D.C. Circuit has recognized that each member of Congress has a ''constitutionally recognized status'' that includes a legitimate need ''to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.'' Murphy, 613 F.2d at 1157. I believe that individual Members are ''authorized'' to seek such information in their roles as constitutional officers. The question whether Congress has separately authorized such requests would turn upon the rules of each House of Congress. In my view, the Executive Branch should seek to satisfy the legislative interests reflected in the information requests of individual Members, to the extent practicable and consistent with the confidentiality obligations of the Executive Branch,

4. In your experience, what percentage of congressional requests for information are answered by the Executive Branch on a voluntary basis?

Response: In my experience at the Department of Justice, the Executive Branch seeks to answer the majority of congressional requests for information on a voluntary basis. Congress rarely seeks the compulsory disclosure of information from a Department or agency.

5. In your view, what is an appropriate reason for withholding information requested by an individual Member of Congress?

Response: Traditionally, the Executive Branch has sought to provide Members of Congress with requested information except where there is a need to protect important confidentiality interests, such as those involving national security information; materials that are protected by law (such as grand jury information, taxpayer information, or materials restricted from disclosure by the Privacy Act); information the disclosure of which might compromise open law enforcement or civil enforcement investigations; presidential communications; or information involving agencies' predecisional deliberative communications.

6. In your view, does the Executive Branch have any Constitutional responsibility to respond to requests for information from individual Members of Congress as part of a process of accommodation in order to promote comity between the branches? If not, why not?

Response: The Department of Justice has recognized that the accommodation process ''is an obligation of each branch to make a principled effort to acknowledge and if possible to meet, the legitimate needs of the other branch.'' Opinion of the Attorney General for the President, Assertion of Executive Privilege in Response to a Congressional Subpoena, 5 Op. O.L.C. 27, 31 (1981). At the same time, the courts and others have distinguished between official requests from Committees and those from individual Members. See, e.g., Exxon v. FTC, 589 F.2d 582, 592–93 (D.C. Cir. 1978) (recognizing that the ''principle is important that disclosure of information can only be compelled by authority of Congress, its committees or subcommittees, not solely by individual members . . .''); Alissa M. Dolan et al., Cong. Research Serv., RL 30240, Congressional Oversight Manual 65 (Dec. 19, 2014) (''[N]o judicial precedent has directly recognized an individual Member's right, other than a committee chair, to exercise the committee's oversight authority without the permission of a majority of the committee or its chair.''). In my view, the Executive Branch should seek to satisfy the legislative needs of Members to the extent practicable and consistent with the confidentiality obligations of the Executive Branch.

7. Is a request from an individual, elected Member of Congress entitled to any greater weight than a FOIA request, given the Member's broad Constitutionally mandated legislative responsibilities? Why or why not?

Response: In view of the constitutional responsibilities of individual Members of Congress, the Executive Branch may well provide information to Members that goes beyond the requirements of the FOIA statute, and the Executive Branch has the discretion to provide information or documents even if it would be exempt from mandatory public disclosure under FOIA. I understand that the Executive Branch does not treat individual Member requests as requests under FOIA, and thus, the Executive Branch may provide more information about Executive Branch programs than it provides to FOIA requestors, who are entitled to receive only documents.

I appreciate your attention to these important questions. Please let me know if I may be of any more assistance on these issues, or on any other matters in the future.

Sincerely,

STEVEN A. ENGEL.

Washington, DC, July 12, 2017.

Hon. CHARLES E. GRASSLEY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN GRASSLEY: I write in response to your June 27, 2017 letter, which continues our correspondence concerning the May 1, 2017 letter opinion of the Office of Legal Counsel (''OLC''). I understand your concerns with the legal opinion, as well as with recent reports concerning Executive Branch policies governing congressional oversight. Because I am currently in private practice, I had no role in drafting the May 1 opinion, and I likewise have no familiarity with the Administration's internal policies concerning congressional oversight requests. If I am confirmed as Assistant Attorney General for the Office of Legal Counsel, I will review the May 1 opinion and ensure that OLC's legal advice reflects my best judgment of the law and established practice in this area.

I provide here my responses to the six additional questions raised in your letter.

1. You acknowledged that the OLC opinion did not examine key additional authorities which recognize the constitutional role of individual Members to seek information from the Executive Branch. If confirmed, will you commit to a more careful study of this issue and other questions I have raised?

Response: Yes.

2. Will you commit to modifying this OLC opinion to be consistent with your own recognition that individual Members ''are 'authorized' to seek . . . information [from the Executive Branch] in their roles as constitutional officers?'' If not, why not?

Response: If I am confirmed, I will review the May 1 opinion and come to my best judgment of the law and established practice in this area, including with respect to any further guidance or clarifications to the May 1 opinion that may be appropriate.

3. You note in your response to Question 3 that ''the Executive Branch should seek to satisfy the legislative interests reflected in the information requests of individual Members.'' As I wrote in my June 7, 2017, letter to the President, the May 1 OLC opinion draws a distinction between ''oversight'' and ''non-oversight'' requests. I have never sent or seen a letter requesting information for ''non-oversight'' purposes, and I still do not understand what it means. As you know, courts have recognized that ''oversight'' is inherent in the legislative power and just as broad. As the Court recognized in McGrain v. Daugherty, 273 U.S. 135 (1927):

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.

Id. at 175. This power of inquiry ''encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.'' Watkins v. United States, 354 U.S. 178, 187 (1957). Congressional oversight encompasses a myriad of legislative tools, processes, and purposes, and is not simply limited to investigations of waste, fraud, and abuse conducted by a Committee Chairman.

How exactly can a congressional inquiry be distinguished on the basis of whether it is an ''oversight'' or a ''non-oversight'' inquiry, to borrow the language from the May 1 opinion? More importantly, by what authority can the Executive Branch purport to make such a determination absent explicit direction from the Legislative Branch?

Response: If confirmed, I will review the distinction between ''oversight'' and ''non-oversight'' inquiries, as those terms are used in the May 1 opinion. The May 1 opinion appears to draw a procedural distinction between information requests made by ''a committee, subcommittee, or chairman exercising delegated oversight authority'' and those made by individual Members who are not acting pursuant to explicit authorization of the Standing Rules of the Senate or the Rules of the House of Representatives. See Office of Legal Counsel, Letter Opinion for the Counsel to the President, Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch at 3 (May 1, 2017). In support, the May 1 opinion quotes the Congressional Research Service's Congressional Oversight Manual, which advises that when individual Members request agency records ''they are not acting pursuant to Congress's constitutional authority to conduct oversight and investigations.'' Alissa M. Dolan et al., Cong. Research Serv., RL30240, Congressional Oversight Manual 56 (Dec. 19, 2014)).

As we have previously discussed, the D.C. Circuit has recognized that individual Members have a ''constitutionally recognized status'' that includes a legitimate need ''to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.'' Murphy v. Dep't of the Army, 613 F.2d 1151 (D.C. Cir. 1979). This would be true, no matter whether those requests are called ''oversight'' inquiries or something else. If confirmed, I will consider these issues in connection with my review of the May 1 opinion.

4. The Inspector General Empowerment Act of 2016 explicitly authorizes any member of Congress upon request to obtain information related to Inspector General reports that is not otherwise prohibited from public disclosure. Do you agree that such requests from individual Members are ''oversight'' requests? Why or why not?

Response: I have not previously studied the referenced provision of the Inspector General Empowerment Act. As a general matter, if a statute calls for the Executive Branch to provide information in response to a request from a Member of Congress, then the Executive Branch should respond—no matter whether the Member's request would be characterized as ''oversight'' or something else—in a manner consistent with the Department's other statutory and constitutional obligations, including its law enforcement, litigation, and national security responsibilities.

5. I asked in my June 12, 2017, letter whether the Executive Branch has any Constitutional responsibility to respond to individual Members of Congress. You noted, as the OLC opinion notes, that requests from individual Members cannot be compelled. But I did not ask whether individual Members have the power to compel responses. They clearly do not. As you noted in your response to question 4, ''Congress rarely seeks the compulsory disclosure of information from a Department or agency.'' Your experience matches my own. As I noted in my June 7, 2017 letter to the President, most responses to requests for information—from Chairmen or not—are received voluntarily. I also believe it is important to remember that many of the relevant case precedents examining questions related to congressional oversight arise in a compulsory context. By virtue of the fact that most responses are voluntary, a court has never had occasion to consider them.

What I want to understand is not whether the Executive Branch will pay a legal penalty for refusing to answer individual Member requests, but whether such requests, made as part of their wide-ranging Constitutional responsibilities, are due the best efforts of the Executive Branch given the nature of those responsibilities and the need and desire for comity between the branches. Do you agree? Is this what you mean by your response: ''In my view the Executive Branch should seek to satisfy the legislative needs of Members to the extent practicable''?

Response: I agree that in the interest of comity, the Executive Branch should give due weight and sympathetic consideration to requests from individual Members of Congress, even where the executive official is not faced with a legal penalty for refusing to answer, and that is what I meant in my prior response.

6. I asked you whether an individual Member request was entitled to any greater weight than a Freedom of Information Act (FOIA) request. You responded that ''the Executive Branch may well provide information to Members that goes beyond the requirements of the FOIA'' and that you believe ''the Executive Branch does not treat individual member requests as requests under FOIA, and thus, the Executive Branch may provide more information about Executive Branch programs than it provides to FOIA requestors, who are entitled to receive only documents.'' However, in my experience, FOIA requestors with ready access to judicial review and experienced FOIA litigators often get more information even than Congressional Committees, let alone individual Members. Unlike FOIA litigants, a Member must first convince an entire House of Congress to hold an executive branch official in contempt before obtaining judicial review of an information request. Should the Executive Branch strive to meet a higher standard for voluntary cooperation with Congress, given its constitutional duties, than merely disclosure of that which could be judicially mandated? If so, what would you do to ensure that Executive Branch officials understand the Constitutional basis for the importance of voluntary cooperation with Congressional information requests?

Response: Yes, I agree that the measure of the Executive Branch's cooperation should not be simply what could be judicially mandated. I believe that, in the interest and spirit of comity, the Executive Branch should seek to satisfy the legislative needs of Members, as indicated by my prior response. That may well include providing additional information about Executive Branch programs beyond what would be available to FOIA requestors. If confirmed, I will ensure that the Office of Legal Counsel's legal advice in this area would be consistent with such principles.

I appreciate your interest in these important questions. Please let me know if I may be of any more assistance on these issues or on any other matters in the future.

Sincerely,

STEVEN A. ENGEL.

HONORING CAPTAIN ROBERT ''BOB'' HOLTON

Mr. TESTER. Mr. President, today I wish to honor the life of Air Force Capt. Robert ''Bob'' Holton, a lifelong resident of Butte, MT, and an intrepid Vietnam veteran.

To Bob's family, on behalf of myself, my fellow Montanans, and my fellow Americans, I would like extend our deepest gratitude for Bob's service to this Nation.

Bob was born on April 8, 1941, in Butte, MT. He graduated from Butte High School in 1959, a talented musician who excelled at the saxophone, clarinet, and piano.

Bob continued his education at the University of Montana, where he earned his pilot's license and served as an outstanding military cadet with the ROTC. Bob went on to marry his high school classmate, Diane Eck, in 1962, and graduated with a business degree in 1965.

Bob proudly served his country during the Vietnam War, flying an F4 Phantom as an interceptor alongside his comrade Maj. William Campbell, a fighter-bomber. Their deployment took them near the border of Laos and Vietnam, where their plane was downed in enemy fire on January 29, 1969.

This disaster sparked a tragic mystery for the Holton family, who have been unable to find the site of the crash, nor fully confirm its outcome. The circumstances gave them no closure and left Bob's family in pain.