

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 Mem-

bers 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 Execu-

tive 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.

Bob's memory has been tirelessly honored, with folks across the U.S. wearing MIA bracelets in recognition of his unfinished story. The National League of Families and the Air Force have continually supported the Holton family's search for Bill, for which they are endlessly grateful.

Now, 48 years after the crash, Butte's only Vietnam war Missing in Action has been found. Bob's remains have been recovered and will finally be returned to his home State. His life and light will be honored Saturday, July 22, in a ceremonial burial at the Sunset Memorial Park.

For Bob's family, the actions by so many have helped provide closure. On behalf of a grateful Nation, I want to thank them for their hope and continued support for Bob and all of our veterans who are missing in action.

Let us now take a moment to recognize the life of Capt. Robert Holton and the legacy he left behind. We deeply appreciate his service to the American people.

ADDITIONAL STATEMENTS

TRIBUTE TO SHANE DELANDE GILBERT

• Ms. HASSAN. Mr. President, today I wish to recognize Mr. Shane Delande Gilbert, born July 16, 2007, and wish him a happy 10th birthday. A Granite Stater from Merrimack, Shane possesses a deep love for our country and its history. Shane recently was graduated from Thorntons Ferry Elementary School, where he was an excellent student in Mrs. DeFrancisco's fourth grade class and enrolled in the school's gifted and talented program. This fall, Shane will enter the fifth grade at James Masticola Upper Elementary School in Merrimack.

Shane is deeply engaged in his community. He is a member of his school's Junior Lego League and is involved with the For Inspiration and Recognition of Science and Technology—FIRST—Lego League, as well as karate.

Shane has, with tremendous strength of spirit, shouldered the responsibility of fighting non-Hodgkin's lymphoma and every day exhibits remarkable bravery and courage. Shane is an active participant in the Greater Nahua Relay for Life. For his 10th birthday, in lieu of gifts, Shane asked that donations be made instead to his Relay for Life team "Spuddie's Against Cancer." He raised \$150 towards cancer research and achieved his personal best by walking 10 miles.

Shane's civic mindedness extends to all aspects of life. He is nicknamed, "The Mayor" due to his gregariousness and passion for helping others. A keen political observer and participant, Shane spoke to many Presidential candidates during New Hampshire's most recent primary season and has expressed interest in 1 day running for

that office himself. He is also a student of the American Civil War, and recently visited Gettysburg National Military Park in Pennsylvania and will be touring the U.S. Capitol today.

Shane's commitment to his community and his love of our country and its history gives me great hope for our future. I join Shane's parents, Laurie-Ann Gilbert and Christine Delande, in celebrating Shane on the occasion of his 10th birthday.●

REMEMBERING MAYNARD F. HAGEMEYER

• Mr. PORTMAN. Mr. President, today I wish to remember Maynard F. Hagemeyer, a WWII veteran and Ohio business and civic leader. Mr. Hagemeyer passed away on July 16, at the age of 98, at his home on Wilmington Road in Clarksville; he died in the same room he was born in on November 22, 1918.

Maynard Hagemeyer attended Spring Hill elementary school in a one-room schoolhouse and graduated from Massie Township High School in Harveysburg, OH in 1936. He attended the University of Cincinnati, studying business administration. He loved horses and, in his youth, showed Percheron and Belgian horses throughout the U.S., and in 1940, he traveled through the Panama Canal, transporting draft horses to Chile.

Drafted into the U.S. Army in 1941, Maynard served almost 5 years during WWII, half in deployment overseas. He attained the rank of captain and commanded a company in the 23rd replacement battalion in North Africa, serving under General George Patton. He also served under General Mark Clark in Italy.

Maynard took over the family farm in 1948 and operated various business ventures over the years. These included an excavation ammonia and fertilizer business, an egg business, and a Standardbred racing and breeding business he started in 1957 that still continues today.

Active in the community, Maynard was a member of the Clarksville Masonic Lodge since 1940, the Scottish Rite and Shrine since 1946, and he joined the Eastern Star in 1947 and served as "Worthy Patron" in 1952 and in 1962.

Maynard was on the Warren County Fair Board for 42 years and the Warren County Veterans Commission for 20 years. He also served as a director of the Ohio Harness Horsemen's Association and was the first president of the Harness Horse Youth Foundation.

He stepped into public service after the death of his father in 1948, completing the balance of his father's term as Warren County commissioner. He was also a member of the Warren County School Board for 10 years and served as a Washington township trustee for 32 years.

Maynard has been recognized many times over the years, including the

Pacer Grass Roots award in 1989, named a "Kentucky Colonel" at the age of 91, Masonic Lodge 75-year award in 2016, and the Harveysburg alumni 80-year award in 2016.

Maynard and his beloved wife, Stella, were married for 71 years and had 4 children, 8 grandchildren, and 10 great-grandchildren.

I would like to honor Maynard Hagemeyer for his contributions to his community, his country, and his family.●

TRIBUTE TO LIEUTENANT ZACHARY HODGES

• Mr. RUBIO. Mr. President, I would like to highlight the outstanding accomplishments of Lt. Zachary Hodges of Gainesville, FL. Four years ago, I nominated this impressive young man to attend the U.S. Air Force Academy.

I recently received a letter from Zachary letting me know that he has graduated from the U.S. Air Force Academy—a major milestone that his family and friends should be very proud of.

Zachary also said he plans to attend medical school at the University of Florida and looks forward to serving our Nation as an Air Force physician.

I am very proud to have nominated Zachary, who has already accomplished so much at the age of 22. His enduring commitment to his studies and his country is a testament to his will to succeed and serve. I have no doubt he will inspire others around him to do the same.

I wish Zachary the best of luck and look forward to hearing of his continued success; I am sure he has a very bright future ahead. May God bless him and all of the men and women who serve our Nation in the Armed Forces.●

TRIBUTE TO MACI BURKE

• Mr. THUNE. Mr. President, today I recognize the hard work of my Commerce, Science, and Transportation Committee intern Maci Burke. Maci hails from Chamberlain, SD, and is a rising sophomore at the University of Nebraska-Lincoln.

While interning on the Commerce Committee, Maci assisted the Surface Transportation Subcommittee. She is a dedicated worker who was committed to getting the most out of her internship. I extend my sincere thanks and appreciation to Maci for all of the fine work she did for the committee and wish her continued success in the years to come.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Ridgway, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

In executive session the Presiding Officer laid before the Senate messages