

DC For Democracy Attorney General Questionnaire

Candidate Name: Edward "Smitty" Smith
Date: October 8, 2014
Campaign Manager: John Rodriguez
Phone: (202) 321-8411
Email: smitty@smittyforag.com

1. What in your background qualifies and prepares you to serve as the first elected attorney general of the District of Columbia?

The Attorney General is the administrator of a large government agency, who must work closely with his counterparts throughout local government, in other states, the community, and the private sector. My legal record is very strong and reflects the most important qualifications for any candidate seeking to serve as Attorney General: sharp legal acumen and analytical skills; experience leading in government; and a clear commitment to public service.

After graduating from Harvard Law School, I returned home to Washington, DC and worked as an attorney at the law firm of Hogan & Hartson (now known as Hogan Lovells). While at Hogan, I was the top-billing associate in my class and earned a reputation for hard work and excellent performance. I conducted over \$40 billion of merger and acquisition deals and securities transactions and advised numerous Fortune 500 companies on corporate law matters. I also was an active member of several firm leadership committees, including the Recruiting Committee, Diversity Committee, and Associates Committee. Notwithstanding the valuable experience I gained in private practice, I left my law firm position to pursue public service, and my career has been defined by that service.

Following my work on the 2008 Obama Presidential Campaign, I served as Deputy General Counsel to President Obama's Presidential Inaugural Committee. In this capacity, I negotiated with local and federal partners, collaborated with unions, contracted with private businesses, managed all contracts and arrangements for the 300-person organization, and provided legal guidance to Committee leadership on all matters.

At the beginning of the Obama Administration, I was honored to receive a presidential appointment to the Department of Commerce where I was charged with managing a team of specialists to launch a \$350 million grant program. I coordinated with numerous federal and state agencies, and collaborated with private companies across the country. During my time at the Department of Commerce, I also advised on a \$4.75 billion grant program and led on-the-ground economic relief teams to provide economic development assistance to communities adversely impacted by the Deepwater Horizon oil spill in the Gulf of Mexico.

After my tenure at the Department of Commerce, I joined the Enforcement Bureau of the Federal Communications Commission. At the FCC I served as special

counsel, prosecuting violations of the Communications Act, holding major corporations accountable to federal laws, and protecting American consumers from predatory and abusive legal violations. I recovered millions of dollars from violating companies and prevented countless sums of monetary harm from being inflicted on consumers.

Finally, because of my leadership skills and experience launching major government programs, I was asked to help form a special task force to develop and implement a multibillion-dollar technology program at the FCC. In my capacity as Chief of Staff and Senior Counsel of the task force, I managed a diverse interdisciplinary team of over 60 lawyers, engineers, and economists on one of the largest technology challenges in the federal government.

The Attorney General must be part lawyer, part administrator, and completely dedicated to serving the public interest. I am the only candidate for Attorney General with a career that demonstrates a commitment to working in government and public service, the only candidate with experience managing in government and working across numerous agencies to promote the best outcomes for the American people, the only candidate who has worked with and managed union employees, and the only candidate with experience representing the government in prosecuting to protect the public interest.

2. Given the general belief, in the District and elsewhere, that the political system is corrupt, does the attorney general have a special role and responsibility to help transform the legal and political culture of the District? If so, how would you go about doing that?

The voters of the District decided overwhelmingly to make the Attorney General an elected rather than an appointed position to send a clear signal that they are tired of politics-as-usual in DC. I am acutely aware that as Attorney General, I will have a special role and responsibility to help transform the legal and political culture of the District.

First, I will refuse to defend any action by the Mayor or Council that is contrary to the law and the public interest. The Attorney General, Mayor, and Council all share an obligation to serve the public interest and, in doing so, should work together in a positive manner to advance the best interests of the District's citizens. However, when Washingtonians explicitly made the Attorney General the steward of the public interest, it was to empower the Attorney General to disagree with the Mayor or Council when his or her independent legal analysis demands. Therefore, while I would not refuse to defend an action of the Mayor or Council because of a simple disagreement on policy, it would be my duty to refuse to defend an action, and even affirmatively act to stop such action, if it is necessary to uphold the laws of the District and protect the public interest. This includes opposing the Mayor and Council when they attempt to ignore the will of the voters

as expressed through the referendum process.

Second, I will vigorously prosecute and, when appropriate, coordinate with the US Attorney's Office to prosecute corruption in the District. Though the Attorney General's authority is limited with respect to prosecuting adult felonies, it may be appropriate to coordinate prosecutions with the US Attorney to ensure that the interests of District citizens are being properly represented in the course of the prosecution. Also, I will use my authority to initiate affirmative civil litigation to recover any misappropriated funds from those who have stolen from the public coffers.

Third, I believe that the Attorney General should lead by example. I am the only candidate in the race who has pledged to adhere to a more stringent set of ethical restrictions than required by the attorney rules of professional responsibility or the ethics guidelines and disclosures administered by the District's Board of Ethics and Government Accountability. Furthermore, I am the only candidate who has agreed to disclose, prior to the election, any potential conflicts of interest that might impact my ability to exercise independent legal judgment as Attorney General. Finally, because light is the best disinfectant, I would implement strong ex parte and public disclosure rules to ensure openness and transparency in communications with the office.

3. The Council has adopted a number of ethics provisions that apply government-wide. Are those provisions sufficient to address corruption and ensure good government? If not, what additional provisions do you consider important to build on those already adopted? Will additional resources be needed either in the Office of the Attorney General or elsewhere?

DC politics have been marred by the "pay to play" culture, and it is widely accepted that money has played too large a role in politics in this city. I strongly agree with the DC Council's adoption of enhanced ethics provisions in recent years, which have been in direct response to the numerous ethical problems and criminal prosecutions that have sullied our city's reputation.

Specifically, I agree with the DC Council's decision late last year to approve a campaign finance reform bill that seeks to tighten up rules around LLC contributions and promote fundraising transparency. This legislation imposes a single contribution limit for "related businesses" with common owners and mandates training programs for political campaign treasurers, among other process reforms. It also enhances penalties for campaign finance violations and authorizes prosecution for misdemeanors by the DC Attorney General. I am in favor of the Office of the Attorney General having the authority to prosecute

misdemeanors relating to campaign finance laws and will prosecute such misdemeanors aggressively.

While this bill is a commendable first step, I believe we should be doing more to stop the influence of money in politics. I am strongly in favor of a bill that eliminates Constituent Services Funds. Although constituent services funds are intended to be used for immediate constituent needs, such as rental assistance to avoid eviction or help with funeral expenses, the reality is that these funds are primarily being used to sponsor or support community events or, worse yet, on expenditures that primarily benefit councilmembers and staff. The ability to transfer leftover campaign funds into these accounts, combined with their use to fund community organizations and events, raises legitimate concerns that these funds are nothing more than an adjunct to political campaign contributions. Because I find the lack of transparency and oversight to be troubling, I am in favor of discontinuing CSFs.

4. Previously, agency legal counsel have reported to the attorney general. Effective October 1, they report to the Office of the Mayor. How do you feel about this recent decision of the Mayor and Council to change the way in which agency counsel report? Do you think it is appropriate? Should the matter be revisited sometime after a new elected attorney general takes office?

I strongly disagree with the decision to move the chain of command for attorneys that work for D.C. agencies to the mayor's office. I believe that it is extremely important for D.C. agencies to operate with legal consistency. The Attorney General is the chief legal officer for the District, and the Office of the Attorney General is the only entity that is authorized to represent the District in court. Thus, it makes logistical sense for the OAG to have oversight over agency attorneys. Many states follow this model and, as Attorney General, I would have preferred to retain agency control. However, I am confident that my experience representing the government, and in particular, managing lawyers across government agencies, makes me uniquely well-suited to handle this situation. We all must work together, as public servants in the District, to act in the best interests of the District. While losing agency control is unfortunate, a proven and effective leader such as myself can overcome this obstacle and represent agencies in litigation despite the change in the chain of command and leadership. I hope that the DC Council will consider revisiting the matter after the elected Attorney General takes office.

5. What are the strongest legal arguments against the New Columbia Admission Act, and how would you rebut those arguments?

Opponents of the New Columbia Admission Act have advanced several arguments that the Act is unconstitutional. However, a careful Constitutional review reveals that each of these arguments is without merit. Critics have argued that the Constitution gives Congress plenary power over the District, including the power to revoke D.C. home rule, and that releasing power by granting statehood to New Columbia would affect an unconstitutional abrogation of Congressional power, since statehood cannot be revoked. This argument, however, fails because the New Columbia Admission Act is written not to release the District of Columbia from Congressional control, but to shrink it in size while retroceding much of its land for the creation of the new state of New Columbia. This redrawing of the District's boundaries has been done before, when what is now Arlington and Alexandria were retroceded to Virginia, and doing so again is within Congress's authority. The Constitution does not specify the exact size of the District except to note its area should be "*not exceeding* ten Miles square" (emphasis added). By the plain text of the Constitution, and past precedent, the District may be freely reduced in size by Congress and, furthermore, Congress possesses the authority to create a new state from the vacated land.

Opponents have also argued that Maryland's consent (something unlikely to be given) would be required for the creation of New Columbia, because the terms of the original cession of land from Maryland to the federal government specified that the land be used for the creation of a federal district. Opponents further argue that Article IV, Section III of the Constitution prohibits the creation of a new state from within an existing state's jurisdiction without that existing state's consent. However, New Columbia would be formed from the ceded territory of the District of Columbia not Maryland and, therefore, would not be subject to Article IV, Section III's restriction. Maryland lost authority pursuant to Article IV, Section III with its original cession in 1791.

We must end the lingering and shameful injustice of denying the full rights of democratic citizenship to the residents of our capital city. The disenfranchisement of over six hundred thousand American citizens in District of Columbia is not only an abrogation of our most sacred American values and a violation of our fundamental human right to voting representation, but a failure to adhere to our own Constitutional principles. The best cure for this injustice is full statehood.

The New Columbia Admission Act, provides a Constitutionally permissible remedy: the creation of a new state out of much of the land that is now part of the District, shrinking the District proper to a Constitutionally consistent smaller area that still provides a federally controlled seat of government as envisioned by the Framers.

6. What would be your top three priorities as attorney general?

As Attorney General, I would focus on three core objectives:

- 1) Working to reform DC's juvenile justice system. These reforms would center on collaborating with other key institutions with youth-serving functions (including other executive agencies, the courts, public schools, and community organizations) to implement practices and programs to identify at-risk-youth as early as possible, provide them with any necessary resources, treatment, or counseling to reduce the likelihood of harmful or criminal behavior and, where appropriate in the event of a criminal offense, provide effective diversion options to avoid their entry into the juvenile justice system.
- 2) Vigorously enforcing our existing consumer protection laws and advocating for the passage of new laws that will provide greater protection for our citizens. I will focus on protections for our most vulnerable citizens, including laws concerning online privacy, predatory lending practices, abusive debt collection practices, consumer credit, and homeowner protections (particularly for our senior citizens).
- 3) As a third-generation native Washingtonian whose family has been denied full rights of American citizenship for decades, the fight for statehood for my home is a top priority. As Attorney General, I will continue to work with other elected officials and statehood advocates and will use the powers of my office to advance the statehood fight. Furthermore, I will establish a special task force within the Office of the Attorney General dedicated to pursuing legal avenues to greater autonomy and statehood.