

S. HRG. 110-66

**NOMINATION OF DAVID JAMES GRIBBIN IV TO
BE GENERAL COUNSEL OF THE U.S.
DEPARTMENT OF TRANSPORTATION**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MARCH 29, 2007

Printed for the use of the Committee on Commerce, Science, and Transportation



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ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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**NOMINATION OF DAVID JAMES GRIBBIN IV
TO BE GENERAL COUNSEL OF THE U.S.
DEPARTMENT OF TRANSPORTATION**

THURSDAY, MARCH 29, 2007

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 11:05 a.m. in room SR-253, Russell Senate Office Building, Hon. Daniel K. Inouye, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. DANIEL K. INOUE,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Today the Committee will consider the nomination of Mr. David J. Gribbin to the position of General Counsel of the Department of Transportation.

If appointed, Mr. Gribbin will serve as the principal legal officer and advisor to the Secretary of Transportation, the Honorable Mary Peters.

Before I proceed, I'd like you to introduce your wife and your seven children.

**STATEMENT OF DAVID JAMES GRIBBIN IV, NOMINEE TO BE
GENERAL COUNSEL OF THE U.S. DEPARTMENT OF
TRANSPORTATION**

Mr. GRIBBIN. Thank you, Mr. Chairman.

Behind me is my wife, Molly, and my children—I'll give them in order of age—Quint, Emily, Abigail, Matthew, Benjamin, Daniel and Nathaniel. Nathaniel is the one who keeps kicking his shoes off, he's the little one.

The CHAIRMAN. You remembered their names.

Mr. GRIBBIN. Yes.

[Laughter.]

Senator LAUTENBERG. I thought I saw him looking at that piece of paper, Mr. Chair.

[Laughter.]

The CHAIRMAN. The General Counsel of the Department will play a key role of guiding the agency through the many challenges ahead. Our Nation's transportation system is slowly collapsing under the tremendous stress of increased congestion caused by growing passenger and freight demand, and years of underinvestment.

All modes of transportation are plagued by stubborn safety problems. Our highways alone lose 43,000 human lives per year.

Tackling these problems will force us to face complex fiscal, environmental safety and security issues requiring extraordinary leadership. America's economic vitality, global competitiveness, and most importantly, our quality of life, depend on our creating a safe and efficient transportation system.

Today we'll hear about Mr. Gribbin's qualifications to serve in this important position, and his general outlook with regard to transportation policy, as well as his views on the privatization of public transportation infrastructure.

I have many technical questions, Mr. Gribbin. In order to expedite the proceedings, I'd like to submit them to you for your response.

Mr. GRIBBIN. Absolutely, sir.

The CHAIRMAN. May I now recognize Senator Lautenberg?

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thank you very much, Mr. Chairman. And I don't want Mr. Gribbin or his family to think that because the hall is not filled, that it's not a matter of great interest. It really is very important, this assignment.

And, I look at this from several standpoints, and commend you for wanting to take on this task. As you can imagine—and as you'll find out if everything goes as you'd like it to—that it is a tough job, but, a critically important one. And when you think of our transportation network, I don't think there has been enough made of the calculation concerning our national security. Our transportation network, Mr. Chairman, is a critical element in our country's security: we may call on it for evacuation of people in an emergency, or to move goods and materials that are critical to preventing any attacks. Heaven forbid if one does occur, our transportation system is vital, in terms of being able to respond positively.

Now, the Senate must perform its due diligence in assessing and confirming nominees that are put forth by the Bush Administration. And, once again, as I see your family, obviously there's a lot of good characteristics in that group. I have never seen such a well-behaved group of youngsters in my life, and I'm an expert, because I've got 10 grandchildren and 4 kids of my own. So I know it's not easy, especially in something as exciting as this must be to your littlest one.

[Laughter.]

Senator LAUTENBERG. Our country deserves nominees that are qualified, who will carry out their duties provided by law, and not simply blindly follow orders from the White House. And I think, Mr. Gribbin, it's important—no matter what the job is—to also include your conscience to make sure that the target is a well-functioning transportation system. As Counsel, you have an enormous amount of responsibility in that regard.

But, we have reasons to be skeptical. Recently, President Bush had appointed a nominee to the Board of Amtrak who had never ridden the train before. I asked him a question at his Committee hearing about that, and he said he had just not done it. And that,

to me, raised a serious question of judgment—or curiosity—about why the Bush Administration would propose such a person for the job on the Board of Directors.

Now, we've not had a chance to meet, Mr. Gribbin, but I look forward to doing so, so we can discuss things together. But, I want to say to you at the outset—I'm concerned about some of the things that you've advocated in the past, especially with respect to privatizing assets owned by the government.

Now, we've fought this battle before on Amtrak, and I remind you that Amtrak was a composition of private passenger railroad lines that had to be brought together under government auspices. Our screeners at the airports were employed by private companies—the airlines—and things did not get done well. In both cases, we finally had to bring them into government.

Now, I come out of the corporate world, Mr. Gribbin, and I ran a large and successful company that I helped start. And, so I know—having had experience in both areas, government and business—that government employees are equally as committed—maybe more so—than lots of people in the private sector. Because it's not just for profit, it's for some element of soul, some element of responsibility, love of country.

So, I would say that my view is that appointees, significant office holders, have to express themselves in a way that gets past pre-conceived ideas and looks at the situation as it currently is.

So, I look forward to having some of my questions answered, Mr. Chairman, and I thank you for moving this nomination forward. Obviously, Mr. Gribbin is a man of some considerable talent, but I want to discuss his views on privatization in particular. Thanks, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Congratulations, Mr. Gribbin, and now the show is yours.

Mr. GRIBBIN. Thank you, Mr. Chairman.

With your permission, I'll open with a brief statement, and then will be glad to move into questions.

The CHAIRMAN. Your full statement will be made part of the record.

Mr. GRIBBIN. OK, great, thank you very much.

Well, thank you, again, for providing this opportunity to meet before this hearing. As, I think, my resume and my statement indicates, I was the Chief Counsel of the Federal Highway Administration, working for Secretary Peters, prior to my current role at Macquarie. I spent 2 years at the Department as her lawyer, and if confirmed, I greatly look forward to re-joining her and some of my former colleagues over at the Department, as this process moves forward.

Given the limited number of people here, and the relative informality, since I'm the only witness, with your permission I'll just submit my statement for the record, and we can proceed directly to what you gentlemen are interested in, the questions and answers.

[The prepared statement and biographical information of Mr. Gribbin follow:]

PREPARED STATEMENT OF DAVID JAMES GRIBBIN IV, NOMINEE TO BE GENERAL
COUNSEL OF THE U.S. DEPARTMENT OF TRANSPORTATION

Thank you, Chairman Inouye, Vice Chairman Stevens, and Members of the Committee. It is an honor for me to appear before you today as President Bush's nominee to serve as General Counsel of the Department of Transportation. I would like to introduce my wife Molly, who is here with me today, and my children—Quint, Emily, Abigail, Matthew, Benjamin, Daniel, and Nathaniel—who are all in attendance. I want to express my gratitude to my family for their encouragement and support.

For the past decade, I have worked in the transportation area, primarily focused on policy issues surrounding highway infrastructure. As Chief Counsel for the Federal Highway Administration (FHWA), I became very familiar with the Federal highway program, worked on a wide variety of legal issues affecting the agency, and gained a solid understanding of how the United States Department of Transportation works. In addition, I had the opportunity to work with a number of stakeholder groups including the environmental community, contractors, and unions. If confirmed, I will enjoy having the opportunity to reestablish ties with these leaders in transportation.

Making travel safer across all modes of transportation remains the Department's top priority. As a father, I am very cognizant of the importance of road and vehicle safety. My son has been driving for 2 years, and I take my daughter for her learner's permit this weekend. Virginia has a program requiring parents to spend 20 hours in the car with their child before granting a driver's license. While the rigors of this program have probably taken a few years off my life, it is one of many programs that have been created since I was licensed that increase safety on our roads. We have made great strides in saving lives and preventing injuries, but we can never become complacent about protecting all Americans when they travel.

Secretary Peters has frequently said that transportation is critical to the freedom we enjoy as Americans and to our Nation's economic vitality. While our current transportation systems have served us well, there are great challenges that lie ahead. If confirmed as General Counsel of the Department of Transportation, I will assist the Secretary in addressing these challenges as her chief legal advisor. I had the privilege of working closely with the Secretary while she was the FHWA Administrator and I was the FHWA Chief Counsel. If confirmed, I look forward to serving under her again and working with her and with each of you to address these challenges.

To that end, if I am confirmed as General Counsel, I will ensure that the Department benefits from timely and accurate legal advice as it carries out its mission to improve the transportation system for all Americans. I also look forward to working cooperatively with the Committee and its staff on transportation issues.

I am eager to use my legal training, my experience, and my leadership and management skills to address the transportation challenges we now face. I also look forward to working with you, Secretary Peters, and my former colleagues to improve transportation services in this country.

Thank you for considering my nomination. I would be pleased to answer any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former name or nicknames used):
David James Gribbin IV
Nickname: D.J.
2. Position to which nominated: General Counsel, United States Department of Transportation.
3. Date of Nomination: January 11, 2007.
4. Address (List current place of residence and office addresses):
Residence: information not released to the public.
Office: Macquarie Holdings (USA), 125 West 55th Street, 22nd Floor, New York, NY 10019.
5. Date and Place of Birth: August 21, 1963, Frankfurt, Germany.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
Mary Elizabeth Gribbin (spouse—not employed)

David James Gribbin V (18)
 Emily Virginia Gribbin (15)
 Abigail Elizabeth Gribbin (13)
 Matthew Vernon Gribbin (11)
 Benjamin Oswald Gribbin (8)
 Daniel Loyd Gribbin (5)
 Nathaniel Gene Gribbin (3)

7. List all college and graduate degrees. Provide year and school attended.

Georgetown University, B.A., 1985.
 Georgetown University Law Center, J.D., 1992.

8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Runner, White and Steele.
 Legislative Assistant, Congressman Larry Combest.
 D.C. Committee Staff, Congressman Larry Combest.
 Legislative Director, Congressman Larry Combest (management).
 Legislative Representative, National Federation of Independent Business.
 National Field Director, Christian Coalition (management).
 Director, Koch Industries (management).
 Deputy Director Congressional Relations, Bush-Cheney Transition (management).
 Chief Counsel, Federal Highway Administration (management).
 Division Director, Macquarie holdings (management).

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, state, or local governments, other than those listed above, within the last 5 years: None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last 5 years.

Board Member, Servants 4 Him (Guatemalan water ministry).
 Board Member, Dominion Academy (Private elementary and middle school).

12. Please list each membership you have had during the past 10 years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Virginia Bar (1992–present), membership not restricted based on any of the categories above.
 National Rifle Association (circa 2003), membership not restricted based on any based on any of the categories above.
 Grace Bible Church (1996–2001), membership restricted on basis of religion, but all are free to attend the services.
 Potomac Hills Community Church (2001–2005), membership restricted on basis of religion, but all are free to attend the services.
 Destiny Fellowship Church (2006–present), membership is restricted on the basis of religion, but all are free to attend the services.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

I do not keep copies of personal checks going back past 1999. The list below is from personal records and on-line searches.

Contributions:

Bush for President, \$1,000 (includes \$500 contribution from spouse), March 23, 2000.

RNC Victory 2000, \$500, October 26, 2000.

RNC National State Elections Committee, \$457, December 5, 2000.

Joe Finley for Congress, \$500, September 23, 2002.

President's Club, \$2,225, April 6, 2004.

Bush for President, \$500, April 2004.

Services to a national party or election committee:

Alternate, Republican National Convention 1996.

Volunteer, Republican National Convention 2000.

Volunteer, Republican National Convention 2004.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

American Road and Transportation Builders Association's Entrepreneur of the Year for 2005.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

I authored, individually or with others the following articles and publication:

The Current FTD System: Far From the Delivery of Roses, Tax Notes, September 1992.

Get Involved in Your Government, Christian American, April 1994.

1994: The Year of the Believer, Christian American, May/June 1994.

Grassroots Effort Paid Off, Christian American, November/December 1994.

Coalition Expands Operation for 1995, Christian American, January 1995.

State Leaders Converge on Capitol, Christian American, February 1995.

Coalition Slates School Board Seminar, Christian American, March 1995.

Coalition Set to Break Barriers, Christian American, April 1995.

State Leaders Advance Cause, Christian American, May/June 1995.

Participation Brings Change, Christian American, July/August 1995.

Bridge Building Across Racial Lines, Christian American, September 1995.

Local Emphasis Ensures Victory, Christian American Magazine, January/February 1996.

Christian Coalition Goes Global, Christian American Magazine, May/June 1996.

Baby Steps for Democracy, Christian American Magazine, July/August 1996.

Persistence Pays Off, Christian American Magazine, September/October 1996.

Campaign to Derail Voter Guides Failed, Christian American Magazine, November/December 1996.

Changed Lives Make the Best Public Policy, Christian American Magazine, May/June 1997.

Training for the Future, Christian American Magazine, July/August 1997.

Seeking God's Face, Christian American Magazine, November/December 1997.

Report to Congress on Public-Private Partnerships, United States Department of Transportation, December 2004.

Speeches on topics relevant to the position for which I have been nominated include these speeches given when I was working for the Federal Highway Administration:

November 17, 2003, presentation to Mobility 21 on the topic of the highway bill.

December 2003, presentation to the National Council for Public Private Partnerships on the topic of the highway bill.

February 11, 2004, presentation to the Jacksonville Florida Chamber of Commerce on the topic of the highway bill.

February 11, 2004, presentation to the Road Gang on the topic of the highway bill.

April 23, 2004, presentation to the Design Build Institute of America on the topic of the highway bill.

May 5, 2004, presentation to the Rome Chamber of Commerce on the topic of the highway bill.

June 22, 2004, presentation to the Wisconsin Transportation Finance Summit on the topic of the highway bill.

July 21, 2004, presentation to the Transportation Research Board Lawyers Division on the topic of the highway bill.

December 9, 2004, presentation to the American Road and Transportation Builders Association on the topic of the highway bill.

January 27, 2005, presentation to the Road Gang on the topic of the highway bill.

March 9, 2005, presentation to the American Road and Transportation Builders Association on the topic of the highway bill.

April 19, 2005, presentation to State-Federal Transportation Conference on the topic of the highway bill.

May 11, 2005, presentation to CH2MHill's board of directors on the topic of the highway bill.

May 24, 2005, presentation to the National Council for Public Private Partnerships on the topic of the highway bill.

I gave these speeches while I was at Macquarie Holdings (USA), Inc.:

April 10, 2006, presentation to Macquarie business leaders on state of the market.

August 4, 2006, presentation to the Design Professional Coalition on the topic of concessions (a long-term lease of an asset in which the concessionaire takes over responsibility for operations and maintenance in exchange for the right to collect revenue).

August 8, 2006, presentation to the Institute of Transportation Engineers on the topic of concessions.

September 19, 2006, presentation to the American Council of Consulting Engineers on the topic of concessions.

September 28, 2006, presentation in a forum for *Street Smart*, a new book by Gabriel Roth.

October 5, 2006, presentation of the Kraft Lecture to the National Association of Bond Lawyers on the topic of concessions.

October 6, 2006, presentation to ASFE on road concessions.

October 27, 2006, presentation to Federal Highway Administration on the topic of concessions.

November 14, 2006, presentation to the Indiana Transportation Conference on the topic of concessions.

November 15, 2006, presentation to the National Partnership for Highway Quality Conference on the topic of concessions.

November 16, 2006, presentation to the American Road and Transportation Builders on the topic of concessions.

December 5, 2006, presentation to the Urban Land Institute on the topic of concessions.

December 7, 2006, presentation to the Pennsylvania Highway Information Association on the topic of concessions.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

March 22, 1991, testimony before House Ways and Means Subcommittee on Human Resources on the topic of the Unemployment Insurance Reform Act of 1991, representing the National Federation of Independent Business.

May 13, 1993, testimony before the Senate Veterans Affairs Committee on the topic of the Uniformed Services Employment and Reemployment Rights Act of 1993, representing the National Federation of Independent Business.

September 30, 2004, before the House Government Reform Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs on the topic of Maximizing Private Participation in Public Transportation. I was not listed as a par-

ticipant in the hearing, rather accompanied then-FTA Administrator Jenna Dorn to answer highways-related questions.

April 22, 2005, testimony before the House Government Reform Committee on the topic of the Boston Central Artery/Tunnel.

May 22, 2006, testimony before the House Transportation and Infrastructure Committee Subcommittee on Highways, Transit and Pipelines on the topic of highway concessions, representing Macquarie.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

For the past decade, I have worked in the transportation area, primarily focused on policy issues surrounding highway procurement. As Chief Counsel for the Federal Highway Administration (FHWA), I became very familiar with the highway program, worked on a wide variety of legal issues affecting the agency, and gained a solid understanding of how the United States Department of Transportation works. In addition, I had the opportunity to work with a number of stakeholder groups including the environmental community, contractors, and unions. During my tenure at FHWA, I served under Secretary Peters while she was FHWA Administrator. I understand her priorities and appreciate her management style because of this experience.

I would like to serve as the General Counsel for the Department because I truly enjoy public service and believe Secretary Peters will do an exceptional job serving the public during her tenure. I look forward to working with her and my former colleagues to improve transportation services in this country.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

I believe the Office of the General Counsel should work closely with the Office of the Assistant Secretary for Budget and the Office of the Inspector General to ensure management and accounting controls are in place and being adhered to.

Management experience of large organizations includes my time as the National Field Director of the Christian Coalition, during which I managed a staff (paid and volunteer) of 50 that oversaw a network of hundreds of volunteers, and my time as Chief Counsel for Federal Highways, during which I managed a staff of 50 attorneys.

20. What do you believe to be the top three challenges facing the department/agency, and why?

I believe the top three challenges facing the United States Department of Transportation are:

(1) Making travel safer across all modes of transportation. Great strides have been made in saving lives and preventing injuries, but we can never become complacent about protecting all Americans when they travel. The Department must work with state and local partners to help build safety considerations into every transportation decision.

(2) Improving the performance and reliability of our entire transportation system. America's competitiveness, to a large degree, rests on our ability to move people and products quickly and inexpensively across the continent and world. This capability is eroding, and our Nation faces serious congestion on the highways, at our ports, at our airports, and on the rails that threatens our economic vitality and our leadership in the global marketplace.

(3) Finding 21st century solutions to 21st century transportation challenges. Today, much of our vital transportation infrastructure is showing its age. At the same time, our growing economy is placing unprecedented demands on all of our systems, while the funding sources we have relied on are less able to keep pace with our needs. Because traditional approaches to transportation planning and policies are becoming less effective, the Department needs to help identify and implement fresh approaches to transportation planning and programs to help keep America moving in the 21st century.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

If confirmed and appointed, I will have no financial arrangements with business associates, clients, or customers. Currently, I am an employee of Macquarie Holdings, Inc. and am paid by them.

My retirement accounts are:

National Federation of Independent Business defined benefit plan worth a few hundred dollars a month at retirement.

Koch Industries defined benefit plan worth about \$800 a month at retirement.

J.P. Morgan managed Koch 401(k) account with the following sub-accounts—

Barclays Global Investment Life Path 2010.

American Funds Growth Fund of America.

SSgA S&P 500 Fund-C.

American Funds EuroPacific Growth R4.

Fidelity managed Macquarie 401(k) account with the following sub-accounts—

Blue Chip Growth.

Pacific Basin.

Aggressive Growth.

Retirement Money Market.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated: Please refer to the Deputy General Counsel's opinion letter.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated: None.

5. Describe any activity during the past 10 years in which you have been engaged for the purpose of direct or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

My roles at Macquarie Holdings, Inc., the Federal Highway Administration, and Koch Industries included supporting increased involvement of the private sector in providing, operating, and maintaining transportation infrastructure. I participated in meetings, presentations, and testified in favor of policy changes that would allow increased private-sector involvement in the transportation sector.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items: Please refer to the Deputy General Counsel's opinion letter.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, state, or other law enforcement authority of any Federal, state, county, or municipal entity, other than for a minor traffic offense? If so, please explain.

Investigated by the FBI and potentially by other agencies for security clearance while at FHWA and for nomination to be General Counsel for the United States Department of Transportation.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain.

Yes. I was informally accused of race discrimination. While working as Chief Counsel of FHWA, I hired an administrative assistant out of the pool of administrative assistants already in the office. The hiring decision was made in conjunction with two FHWA career staff, and the successful applicant was supported unanimously. One of the unsuccessful candidates complained that she was not chosen because of her race. She threatened to file a formal complaint but never did, and the matter was dropped.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination: None.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by Congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect Congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RESUME OF DAVID JAMES GRIBBIN IV

Experience

Division Director, Macquarie Holdings, Inc. (USA), January 2006 to present.

Provide marketing strategy and business development for asset acquisitions in the U.S.

Lead government relations at Federal, state, and local levels.

Sabbatical, July 2005 to December 2005.

Took family to Guatemala to experience life in a developing country.

Created non-profit, tax-exempt corporation to serve needs of impoverished Guatemalans.

Chief Counsel, Federal Highway Administration, July 2003 to July 2005.

Legal Counsel to Federal Highway Administrator, Deputy Administrator and Executive Director.

Manage staff of 50 attorneys to provide agency with accurate and timely legal advice on all matters affecting FHWA.

Director, Public Sector Business Development, Koch Industries, July 1999 to July 2003.

Develop and execute strategic plan for expanding Koch businesses in 12 targeted states working with Governors, legislators, and leaders in state highway authorities.

Manage public-sector capabilities, including media, government, and community relations for Koch Materials using internal resources and consultants.

Director, Government Affairs, Koch Industries, September 1997 to July 1999.

Managed staff of seven to execute Federal legislative and political efforts of company.

National Field Director, Christian Coalition, February 1994 to September 1997.

Managed staff of 15 and over 50 volunteers to oversee grassroots, political, fundraising, and media strategies of 48 state affiliates of the Coalition and 1,980 local chapters.

Edited and compiled the Coalition's grassroots training program, which consisted of five different manuals and a number of workshops. In 1996 alone, these materials were used to train over 16,000 activists in 263 schools held across the country.

Served as Executive Producer for the Coalition's monthly satellite television show, *Christian Coalition Live*.

Created organizations for outreach to African-American community (The Samaritan Project) and to Catholic community (The Catholic Alliance).

Legislative Representative, National Federation of Independent Business (NFIB), April 1989 to February 1994.

Lobbied U.S. House of Representatives and Senate on behalf of the Nation's largest organization representing small businesses.

Testified before committees of both Houses of Congress.

Developed proposal for NFIB's Legal Foundation.

Legislative Director, U.S. Rep. Larry Combest (R-TX), July 1988 to April 1989.

Managed the legislative program in the office to keep both the Congressman and his constituents informed of legislation pending before the House of Representatives.

Professional Staff, House Committee on the District of Columbia, June 1988 to July 1989.

Drafted amendments to legislation pending before the Committee, attended hearings with and on behalf of Congressman Combest, and worked to defeat legislation providing for D.C. statehood.

Legislative Assistant, U.S. Rep. Larry Combest (R-TX), May 1986 to July 1988.

Tracked legislation pending before the U.S. House of Representatives in order to keep both the Congressman and his constituents informed. Focused on legislation affecting foreign affairs, trade, education, labor, and transportation issues.

Education

Georgetown University Law Center, Washington, D.C., 1992.

Graduated with a Juris Doctor, *cum laude*.

Georgetown University Washington, D.C., 1985.

Graduated with a Bachelor of Arts in Philosophy.

Mandarin Training Center, Taipei, Taiwan, 1983.

Other Activities

Help America Vote Act Volunteer, Cuyahoga County, Ohio, 2004.

Board Member, Dominion Academy, 2002 to 2004.

A private school in Leesburg, Virginia.

Deputy Director of Congressional Relations, Bush-Cheney Transition, December 2000 to February 2001.

Assisted Director of Congressional Relations in managing contacts with Members of Congress and coordinating strategy for getting the President's Cabinet nominated.

Official Proceedings, Republican National Conventions, 2000 and 2004.

Assisted speech coaches train Convention speakers.

Lecturer, American University, 1996 and 1997.

Lectured graduate and undergraduate students on grassroots organization and lobbying.

Lecturer, Kennedy School of Government, 1996.

Lectured graduate students on grassroots organization and political mobilization.

Trainer, International Republican Institute, 1996.

Worked with over 100 local candidates in KwaZulu Natal, South Africa to prepare them for the first democratically held elections in the history of that province.

Virginia Alternate Delegate to Republican National Convention in San Diego, 1996.

Senator LAUTENBERG. Thanks, Mr. Gribbin.

Mr. GRIBBIN. Yes, Senator.

Senator LAUTENBERG. OK, so that neither one of us is particularly good at this audio technology.

I would ask, if it's all right with you, Mr. Chairman, whether or not we can hear this statement as Mr. Gribbin has prepared. It's not long at all, and so is that something you have a copy of?

Mr. GRIBBIN. Absolutely, sir, absolutely.

Senator LAUTENBERG. Yes.

Mr. GRIBBIN. I was just trying to be sensitive to your time. I know that you have votes.

Senator LAUTENBERG. Thank you for the consideration of the time. But, I'd like to hear your statement.

Mr. GRIBBIN. Again, thank you very much for having me here today, it's an honor for me to appear before you as President Bush's nominee to serve as General Counsel at the Department of Transportation. I've already introduced my family, but I want to express my gratitude to them for their support and encouragement through this process.

For the last decade, I've worked in the transportation area, primarily focused on policy issues surrounding highway infrastructure. As Chief Counsel of the Federal Highway Administration, I became very familiar with the Federal Highway program, and worked on a wide variety of legal issues affecting the agency. I also gained a solid understanding of how the United States Department of Transportation works.

In addition, I had the opportunity to work with a number of stakeholder groups, including the environmental community, contractors, and unions, and if confirmed, I will enjoy having the opportunity to re-establish ties with these leaders in transportation.

Making travel safer across all modes of transportation remains the Department's top priority. As a father, I'm very cognizant of the importance of road and vehicle safety. My son has been driving for 2 years, and I take my daughter for her learner's permit this weekend.

Virginia has a program requiring parents to spend 20 hours in the car with their child as they're learning how to drive. Now, while the rigors of this program have probably taken a few years off of my life, it is one of the many programs that have been created since I was licensed that increased safety on our roads.

We have made great strides in saving lives and preventing injuries, but we can never become complacent about protecting all Americans when they travel.

Secretary Peters has frequently said that transportation is critical to the freedom we enjoy as Americans, and to our Nation's economic vitality. While our current transportation systems have served us well, there are great challenges that lie ahead. If confirmed as the General Counsel of the Department of Transportation, I will assist the Secretary in addressing these challenges as her chief legal advisor.

As I mentioned, I had the privilege of working closely with the Secretary while she was the Federal Highway Administrator, and I was the Federal Highway Chief Counsel. If confirmed, I look forward to serving under her again, and working with her—and with this Committee—to address these challenges.

To that end, if I'm confirmed as General Counsel I will ensure that the Department benefits from timely and accurate legal advice, as it carries out its mission to improve the transportation sys-

tem for all Americans. And, if confirmed, I look forward to working cooperatively with the Committee and its staff on transportation policy.

I'm eager to use my legal training, my experience, and my leadership and management skills to address the transportation challenges we face. I also look forward to working with you, Secretary Peters, and my former colleagues to improve transportation services in this country.

Again, thank you for considering my nomination. I'd be pleased at this time to answer any questions you may have.

Senator LAUTENBERG. Thanks, Mr. Gribbin.

When it's not trying to shut down Amtrak altogether, the Bush Administration has been advocating privatizing our Nation's passenger railroad system. And, this ideology has been largely rejected over the years. Now, how are you going to deal with the movement within the Administration to privatize or outsource Amtrak's functions? What's your view on that?

Mr. GRIBBIN. Well, let me start by saying that I have ridden Amtrak, in fact I ride it repeatedly. In my current role with Macquarie, I have an office in D.C. and in New York, and Amtrak is the most reliable way to get from New York to D.C.

Senator LAUTENBERG. I agree.

Mr. GRIBBIN. Usually I try to fly, but if you've flown in and out of LaGuardia, you'd understand that that's not a particularly reliable option. So, I definitely appreciate the services that Amtrak provides.

That said, I'm not—to be honest with you—very familiar with the Administration's policy toward the privatization of Amtrak. It is my understanding, that unlike my predecessor, I will not be on the Amtrak Board and will not be in a kind of policy position regarding the Amtrak. My role will be primarily focused on supporting the Secretary and providing her with legal advice regarding the Department's role *vis-à-vis* Amtrak.

Senator LAUTENBERG. But, she'll come to you for guidance, you will also, not only be a policymaker, you'll also be a, an auditor as—I'm not using the term in the formal sense—but you'll also be looking at ways that you might think could improve the operations of Amtrak. And, the Administration has not been shy at all about suggesting, through funding, that Amtrak could be shut down.

Now, in each case over the last couple years, it's been the Congress—the Senate, and the House—restoring the funding for Amtrak's operations. Even so, we've had a tough time. In the preparation for the budget this year, the amounts allocated through the Budget Committee and in the budget resolution are substantially higher, maybe by twice, than that which comes down from the Bush Administration.

So, one of the things that concerns me is the ideology that if we can shed ourselves of the ownership of Amtrak, we can also shed ourselves of the responsibility of funding it. And, that's not the full measure of the value of Amtrak now. You've had this experience working in the private sector with a company that is one of the largest operators of toll roads. And, now, have they acquired those roads from government ownership over the years?

Mr. GRIBBIN. Yes, Senator, actually to be clear, the government continues to own the facility. The private sector would come in and lease it to them for a fixed period of time. But ownership remains with the state and with the public.

Senator LAUTENBERG. OK, so what's the advantage to having these things become part of a private enterprise?

Mr. GRIBBIN. Advantages can be found on several different levels. Talking particularly about toll roads—right now, the public has invested heavily in these facilities and actually the facilities are worth considerably more than can be realized under a traditional tax-exempt borrowing mechanism. The primary benefit that concessions bring, is the concessionaire is able to tap a market for finance that's different than what the public can tap.

You saw in Indiana, where they studied the tax-exempt value of the toll road. Basically the state went out and said, "What would this asset be worth if we were to just bond against future toll streams?" And, the answer turned out to be about half of what the concessionaire ended up paying at the end of the day. There's no particular magic as part of that, it really is a result of the fact that the private sector has access to debt that the public sector does not.

Senator LAUTENBERG. Unless the borrowing is supported by the full faith and credit of the entity, being the state or county or the Federal Government.

Mr. GRIBBIN. That's absolutely true.

Senator LAUTENBERG. Right. And, are those conditions particularly noted in the agreement with the private contractors that the state—most of these are state-owned roads, I assume—do they ask, or must they in order to borrow in the marketplace at the best rates, do they ask for the support of the state government, in terms of the issuance of these bonds?

Mr. GRIBBIN. No, they do not. The bonds that are issued and the debt that is issued in the private sector carries no backing from the government at all. So, if the private sector were to overpay, which has actually happened in several instances in this country, those investors lose their money with no recourse back to the state or back to taxpayers.

Senator LAUTENBERG. Why do we see the borrowing process easier in the private sector than in the public sector?

Mr. GRIBBIN. The public sector has access to, essentially what we're talking about, is the tax-exempt bond market.

Senator LAUTENBERG. Yes.

Mr. GRIBBIN. Which tends to be relatively conservative in its lending practices. A borrower needs to get a rating, all of that. Where, the private sector can tap into equity and then debt beneath that equity. The equity is going to take a little bit more of a risk, sees a brighter future, and therefore lenders will lend more against a facility than you can get in the tax-exempt market.

Senator LAUTENBERG. What happens to the—your experience has been fairly limited to highway issues, but the future transportation needs of our country can not be met by cars and airplanes alone. Now, if confirmed, how would you ensure that we have a balanced transportation system, with rail travel options for both travelers and freight shippers? Or, do you believe that a balanced transportation system is a necessary composition?

Mr. GRIBBIN. Sir, yes, I think a balanced transportation system is vital. Right now we have transportation systems across a wide variety of modes and still have a significant amount of congestion. So, clearly we need everything we have currently, and more of it. I think having a balanced approach, an inter-modal approach too, is very important.

Senator LAUTENBERG. Well, the experience that you described about going up to New York is interesting, because I do it on a regular basis. I go up to either Newark airport or LaGuardia airport because I live in New Jersey, mid-way between the two airports.

And, what I find is that I'll get on a flight, as I did last Friday night—a week ago, Mr. Chairman—for a 5 o'clock flight. We—the pilot always introduces the plan, and says that this is a 36-minute flight. And, the 5 o'clock flight left the ground at 7:15 p.m., and got to New York—after circling awhile—at 8:15 p.m., and then we found that there were no gates ready for us, so that took another 10 minutes. So, that 5 o'clock flight unloaded its passengers at—about 3 hours and 25 minutes later.

That train, as you noted, it's pretty comfortable. And I think we need to continue to look at how to expedite things in this country. As I'm sure you're aware, the skies are terribly crowded now. And there's going to be a whole series of new airplanes, they're being introduced, the very light jets. They expect 5,000 of them to be in the sky in the next 10 years. And so, we now see these late flights—one out of four flights across America; even more out of Newark are delayed—but across America, the delays are still enormous. And, so, and if we talk about an alternative that suggests that maybe Amtrak could help relieve the congestion, if we then want to put it in the private marketplace where it, again, had its origination, I think that leaves us in a difficult position.

Now, your employer, Macquarie, purchased the Virginia Dulles Greenway from a Haliburton subsidiary that had defaulted on its debt payments. Now it's clear that the Haliburton subsidiary cashed out, now Macquarie is looking to raise tolls on Northern Virginia drivers. Now, how does the traveling public benefit from big investment firm deals, such as these?

Mr. GRIBBIN. Very good question, Senator. I actually take the Greenway, I took it on my way here this morning, although the accident on the Dulles Toll Road negated any savings I got from the Greenway, but that's another story.

Senator LAUTENBERG. You were really preparing for this hearing. [Laughter.]

Mr. GRIBBIN. Exactly.

Senator LAUTENBERG. Tried them all.

Mr. GRIBBIN. Yes, I actually spent 2 hours in traffic with seven kids in the car, and so I thought, "The hearing will be the easy part of the day."

But, back to the Greenway. In essence, my family moved out to Leesburg because of the Greenway. It gives us a relatively quick way to get to and from Washington, D.C. And, while the tolls are going up and—to be honest with you, I haven't shared this with my employer yet—but I actually bypass the Greenway when there's no congestion. It's a \$3.00 toll. When I head home this afternoon, since

we'll probably get out before rush hour, I won't take the Greenway. On the way in this morning I was in a hurry, and I took it.

That facility would not have been built by the Commonwealth of Virginia. It just wouldn't exist. So, the choice really came down to, in that case—are taxpayers willing to pay a little extra for facility, and have the option of using it, or not have a facility at all?

Senator LAUTENBERG. Do you see a role for rail in dealing with emergencies like 9/11 or natural disasters like hurricanes? You know, Mr. Chairman, there were a couple of major nuclear generating/energy generating plants that were abandoned after the facility was built, and built meaning having invested billions of dollars. They were abandoned because there was no satisfactory evacuation process or design to get people away if there was a problem in the nuclear plant. So, do you see a role for dealing with emergencies like 9/11, natural disasters like hurricanes, or those accidents? Or breakdowns in the system, as a result of insufficient access to modes of transportation, like rail?

Mr. GRIBBIN. Oh, absolutely. I think that in an emergency you need to take advantage of every mode of transportation you have. And, if you have access to good rail transportation, that actually should be taken advantage of.

Senator LAUTENBERG. OK, so do you see any inconsistency between your call, call for privatization and the reliability of having facilities available for emergencies?

Mr. GRIBBIN. Not at all, because when you have concession agreements, which are leases, the concessionaire has to abide by the concession agreement. Which in the case of Indiana and Chicago, are a couple-hundred page documents. These agreements will include such things as, "in case of emergencies the concessionaire needs to do the following . . ." And, again, because the state is the owner, or the city is the owner, they have the right to prescribe whatever type of emergency scenario they want.

For example, the owner could say to the concessionaire, "In case of emergencies all tolls need to be lifted." Or, "In case of emergencies, traffic must be reversed on lanes so that more people can head in a certain direction." So, the fact that a facility is privately operated, shouldn't inhibit at all what's able to be done in an emergency.

Senator LAUTENBERG. You look at the Chicago situation with the elevated—

Mr. GRIBBIN. Yes, sir.

Senator LAUTENBERG. Is that portion of the system a candidate for privatizing, with all of the infrastructure improvement that has to be made there?

Mr. GRIBBIN. The Chicago Skyway has already been privatized, or has been concessioned. If there are other segments of highway in that area, I'm not familiar with them. But, yes, and in that case—

Senator LAUTENBERG. Well, that's not a good argument for privatization. I mean, that system has really broken down, Mr. Chairman.

Well, thank you very much, Mr. Gribbin.

And, Mr. Chairman, the one thing that I think we have to make certain of, is that, talks about privatization should take place be-

fore there's any precipitous action—or any action—because it's going to run afoul, many thoughts about privatizing something as essential as rail systems, that have their peculiarity of making money, or at least having decent revenues when the work hours are there, but otherwise having to make up for a lot of dead time and idle equipment.

Mr. Gribbin, thanks very much.

Mr. Chairman, I'll reserve the right to submit further questions in writing.

Mr. GRIBBIN. Thank you, Senator.

The CHAIRMAN. I thank you very much. At the request of Members of the Committee, I wish to assure them that the hearing record will remain open for 2 weeks. This will just cover the recess period, so that Members will have time to submit any further questions for the record, like Senator Lautenberg.

And I would urge all Members who would like to meet personally with Mr. Gribbin to do so at their earliest convenience. The Committee also expects the nominee to answer these questions submitted for the record, fully and expeditiously.

And, Mr. Gribbin, I thank you very much for your testimony this morning and I thank your wife, Molly, and children for being in attendance and well-behaved.

Mr. GRIBBIN. Thank you, Mr. Chairman.

The CHAIRMAN. The hearing is now adjourned.

[Whereupon, at 11:35 a.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO
DAVID JAMES GRIBBIN IV

Question 1. Please describe your work with the private sector on transportation infrastructure, particularly with respect to private operations of roads and other infrastructure.

Answer. I have worked for both Koch Industries and Macquarie (my current employer) encouraging the increased use of the private sector in the provision of transportation infrastructure. At Koch, I worked with a business called Koch Performance Roads, Inc. (KPRI). This business offered to design, build and maintain an asphalt pavement for a number of years. This approach freed states from concerns that a contractor might provide them with sub-standard pavement, because all the future liability was carried by the entity doing the design and construction.

At Macquarie, I have been involved in helping state and local governments understand when they might benefit from operating some of their assets as a concession. While not appropriate for all circumstances, concessions can be very helpful to meet capital needs of a state or local government.

Question 2. What role should the government have in ensuring that all citizens, regardless of income, have access to affordable, reliable and efficient transportation options?

Answer. Transportation is key to enabling people to find productive employment, which is the best way to eliminate poverty and the suffering caused by poverty. Governments have historically worked to ensure that low-income workers have access to affordable transportation, and they should continue to do so.

Question 3. Do you believe government subsidies are a legitimate tool to preserve access to transportation facilities for citizens who are priced out of using a transportation facility, such as a toll road that has been turned over to a private operator?

Answer. Yes.

Question 4. What role does the Federal Government have in preserving efficient and equitable interstate mobility when a state or other public entity turns a public transportation asset over to a private company?

Answer. The Federal Government's role has traditionally been focused on a number of areas, including ensuring that taxpayer dollars are spent appropriately, establishing safety standards, and providing a nationwide perspective on mobility. This role should be maintained even on systems containing a privately leased facility.

Question 5. How does the Federal Government ensure that private operators continue to invest in and upgrade the public infrastructure that they operate on a long-term basis, especially toward the end of a concession, when a private company might be reluctant to expend capital?

Answer. Current concession agreements require concessionaires to maintain and upgrade the highways they operate. At the end of the concession term, concessionaires have less of an incentive to keep the facility in excellent condition. To counter this lack of incentive, concession agreements must require concessionaires to hand the facility back in a defined condition and to make needed capital expenditures in the waning years of the agreement.

Question 6. Mr. Gribbin, two significant truck safety rules promulgated in the past several years by the Federal Motor Carrier Safety Administration and approved by the DOT General Counsel were ruled "arbitrary and capricious" and thrown out by the Federal courts. In these cases, the court noted the poor quality of these rules developed by the Department and the disregard of Congressional intent demonstrated by the DOT in crafting them. What will you do as General Counsel to ensure that the quality of the rules promulgated by the Department improves and that Congressional intent is fully considered when such rules are crafted?

Answer. If confirmed. I would commit all the time and attention it takes to ensure that the regulations promulgated by the Department are of the highest quality, and that they reflect the intent of Congress.

Question 7. As the DOT's head lawyer, you would review and approve all of the regulations promulgated by the Department, including the safety regulations that are so important to the transportation system and the traveling public. While you have clearly had experience in the transportation policy arena, can you tell the Committee what significant regulatory work you have been involved in during your career that qualifies you for this significant position?

Answer. I have worked on a wide variety of regulatory matters from the early 1990s through my time as Chief Counsel for FHWA. During my time at the National Federation of Independent Business (NFIB) in the early 1990s, I helped reshape the payroll deposit rules (which are found in Internal Revenue Service regulations) for small businesses. The changes made and the policy reasons behind them can be found in an article I wrote for *Tax Notes Magazine*. Most of my regulatory experience occurred during my time at FHWA, where I worked on regulations across a wide variety of policy areas.

Question 8. Mr. Gribbin, your transportation experience has primarily been in the highway sector. What experience do you have with the other modes of transportation within the Department that will prepare you for this position? As you know, ports and maritime vessels, airlines, railroads, trucks, pipelines, and automobiles are all equally important to this Committee.

Answer. I agree that transportation experience in government is a plus in undertaking a job as significant as that of Department of Transportation General Counsel, and my former position as Federal Highway Administration Chief Counsel has exposed me to the fundamentals faced in each mode, including drafting regulations and legislation, managing litigation, enforcing personnel protections, and carrying out the letter and spirit of numerous Federal laws, such as the National Environmental Protection Act. While more experience in other modes of transportation would be advantageous, my employment background in transportation is comparable to or broader than that of the last several DOT General Counsels at the time of their appointments.

Question 9. Under current law, there is a pilot program that would allow tolling on existing interstates. Do you support requiring a state that leases the existing interstate operations and tolling authority to a private operator to share those proceeds with the Federal Government to repay the Federal investment in that interstate segment?

Answer. Current law requires states participating in the lease of a highway asset that has been partially financed with Federal funds to use an amount equivalent to the Federal contribution for title 23 purposes. This balances the states' need for flexibility with the Federal Government's stewardship responsibility and ensures that highway fund receipts are used for their intended purpose.

Question 10. There seem to be significant problems with the public-private partnerships and highway privatization schemes in the United States and Canada that I have looked at to date. For example, State Route 91 in California was eventually bought back by the state, at a considerable cost to the government. In Canada, the Toronto community has consistently complained about increased tolls after its local government sold the 407 Expressway. The government sued to stop toll increases but lost, and the community is now stuck with private ownership for the next 90 years. What protective measures must the public sector take to ensure future projects are successful and primarily benefit the public, not private companies' shareholders?

Answer. Concession agreements, due to their long duration, have provisions allowing the owner of the facility to terminate the lease and take back operational control of the facility. In the case of SR 91, Orange County purchased the franchise rights and now operates it itself. Interestingly, since the county took control, it has doubled the toll rates, and the facility is worth far more than its purchase price. Similarly, the government has the right to terminate the concession on the 407 Expressway as long as it pays the concessionaire for the value of the facility. From a policy standpoint, long-term concessions pose a potential problem because political needs are likely to change over the life of the concession. This problem, however, can be addressed by including provisions in the lease agreement to protect the public, such as allowing the government to terminate the concession at any point by paying the fair market value of the remaining concession rights.

Question 11. The FAA's greatest challenge is the successful modernization of the National Airspace System. This complex multi-year effort will require substantial resources. The FAA, however, has a history of mismanagement—cost overruns and

delays—in handling past modernization programs. Do you have any recommendations on measures DOT should be taking to ensure FAA modernization is accomplished in an effective and timely manner?

Answer. While I served in the Department, the Inspector General's office worked with the different modes on a "mega projects" oversight process. This process was designed to help avoid problems with cost overruns and delays. In addition, I understand Congress has funded a Joint Planning and Development Office within the Federal Aviation Administration to address just these sorts of challenges. Finally, it has been my experience that significant cost overruns and delays, *i.e.*, those not caused by changes in material costs or minor modifications to scope, are caused by a failure to clearly define the nature of the problem to be solved; the failure to build consensus around a preferred solution; and/or the failure to plan the solution to an appropriate level of detail.

Question 12. You have been a proponent of greater private sector involvement in transportation through public-private partnerships. The FAA's contract for Flight Service Stations can be viewed as a type of public-private partnership, and it has generally been well received—it is reported that this approach has both saved FAA money and improved services. In FAA's modernization proposal, the Administration has asked for specific authority for FAA to use lease arrangements, indicating it may pursue additional modernization efforts in this manner. Your time in the private sector, including your current position at Macquarie, gives you unique experience and knowledge to comment on the pitfalls of such arrangements. What caveats would you offer with regard to private sector involvement in transportation infrastructure?

Answer. The private sector is incentivized to increase profits, and as a result, it responds remarkably well to incentives that will increase or decrease profits. This profit incentive drives innovation and creativity, both of which can be harnessed by the public sector. However, the public sector needs to carefully identify the goals and policies it wants to accomplish in a public-private partnership and ensure that the contract it has with the private sector carefully aligns incentives to achieve its goals and policies.

Question 12a. What issues do you believe the FAA should be particularly careful about if it attempts to pursue additional modernization efforts through lease agreements?

Answer. Not being familiar with the details of the FAA's modernization effort, I am hesitant to offer detailed advice. However, public-private partnerships that work best are those that take the various risks contained in any business transaction and apportion them to the party best equipped to manage the risk. Typically, the risk of cost overruns, delays, and quality is carried by the private sector, with appropriate rewards/penalties built into the contract. But the public sector must always maintain careful oversight of such transactions to ensure that the taxpayer is protected.

Question 13. It is my understanding that the Federal Aviation Administration (FAA) is planning to eliminate Central Weather Service Units (CWSUs) from each of its 21 Air Route Traffic Control Centers (ARTCC) and may contract these services with a private sector entity. Since being established, the Weather Units have been considered a key safety redundancy for the National Airspace System that ensured on-site, accurate weather forecasts. I am concerned about the prospect of ARTCC controllers not having an on-site meteorologist and face-to-face interaction for their service delivery method, particularly during periods of bad weather, where forecasts can change frequently. Can you tell me the prospects for moving in this direction?

Answer. I am not familiar with the latest on FAA's plans regarding Central Weather Service Units, but if confirmed, I would be pleased to explore this question and provide a detailed answer to the Committee.

Question 13a. Would you support such an initiative despite the potential safety impact?

Answer. The Secretary believes that the safety of the traveling public must continue to be the Department's top priority, and I strongly agree with her. Decisions regarding how the FAA best delivers its service to the traveling public are primarily the responsibility of the FAA Administrator. That said, if asked my opinion, I would recommend that any changes in FAA practice fully weigh the impact those changes would have on safety.

Question 13b. What will be the impact of not providing ARTCCs with weather reports that include local knowledge of both the microclimates the airports operate in and their traffic patterns which would likely be lost if such services were centralized?

Answer. The professional staff of the FAA, who are intimately familiar with the difference in information contained in the two reports and how that may impact their services, would be better able to address this question.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
DAVID JAMES GRIBBIN IV

Question 1. Based on its 2006 Agreement with the FHWA, New Jersey continues to use multi-year funding as a financing method for its infrastructure projects. If confirmed, will you ensure that USDOT continues to approve New Jersey's use of multi-year financing in its Statewide Transportation Improvement Program (STIP) as they did for the FY 2006–2008 STIP and FY 2007–2010 STIP?

Answer. If confirmed as General Counsel, I would support the Administration's policies and the policy direction of Secretary Peters on this or any other issue. I have been told that New Jersey has reached an agreement with FHWA on the FY 2006–2008 and the FY 2007–2010 STIPs, which incorporate the use of multi-year financing. I have no reason to believe the Department intends to revisit that agreement, and I would not advise doing so should I be confirmed.

Question 2. If confirmed, will you ensure that the Department continues in its efforts to develop a clarification document or guidance on the issue of multi-year funding to FHWA and FTA field offices?

Answer. Yes.

Question 3. You suggested during our meeting that you don't feel your lack of experience in non-highway modes of transportation will be a problem because you can essentially learn "on the job." How do you propose to do this?

Answer. I have more transportation experience than most recent DOT General Counsels. In the areas in which I am less experienced, I would do what I presume former General Counsels have done—namely, work aggressively to learn the subjects at hand, rely on the Department's talented professional career staff for advice, and seek the judgments of experts in the field, including those in Congress.

Question 4. If confirmed, will you continue to push the Bush Administration's agenda to privatize or outsource Amtrak functions?

Answer. If confirmed, I would expect to support and promote the President's budget request for departmental programs, and also to engage with Congress and stakeholders on the balancing of priorities and opportunities for shaping a transportation budget as a whole each fiscal year that best serves the American public. To be clear, however, the Secretary has designated Federal Railroad Administrator Joe Boardman to be her designee on the Amtrak Board and therefore, I expect my role would be limited to providing support for the Secretary and the Administrator with regard to Amtrak-related issues.

Question 5. You served as an official of the Christian Coalition, an organization that has openly opposed the concept of affirmative action. If confirmed as USDOT's top legal official, would you have any reservations about defending legal challenges to Federal programs such as the Disadvantaged Business Enterprise program, which promotes Federal contracts for female-owned and minority-owned businesses?

Answer. If confirmed, I would work to ensure that the United States Department of Transportation complies with the letter and spirit of the law, and would carry out the traditional role of defending against legal challenges to Federal programs, including the Disadvantaged Business Enterprise program.

Question 6. The Christian Coalition also opposes gay rights. If confirmed, would you be able to evaluate impartially a claim of sexual orientation discrimination by a USDOT employee?

Answer. The role of the General Counsel is to provide impartial legal advice to the Secretary and to ensure that the Department adheres to the spirit and the letter of the law. If confirmed, I would work to ensure that any claim of discrimination within the Department is adjudicated fairly and in full accordance with the law.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO
DAVID JAMES GRIBBIN IV

Toll Roads

Question 1. As Division Director of Macquarie Holdings, one of your responsibilities was to advocate the adoption of state legislation to allow for concession agreements with private companies to lease and toll highways. How will your role at

USDOT differ from your previous role at Macquarie Holdings since one of the agency's new initiatives is to promote the same thing?

Answer. I view the role of General Counsel at the Department of Transportation as fundamentally different from my current, private-sector employment. I served formerly as Federal Highway Administration (FHWA) Chief Counsel under the direction of then-Administrator Mary Peters. In that role, I provided legal advice to the Administrator and worked to advance the agency's policy priorities. If confirmed as General Counsel of the Department of Transportation, I anticipate performing similar activities—advising Secretary Peters and working to implement the policies of the Department.

Question 2. What is your opinion of allowing foreign owned investment firms in purchasing PPP lease agreements for long-term tolling and having virtual ownership of Federal roads?

Answer. If confirmed as Department of Transportation General Counsel, I would seek to advance the policy objectives of the Secretary in this area as in any other. That said, I view the concept of investment in transportation infrastructure by private enterprise as one more option that a state or other public body should have available to it when confronting the problem of growing congestion and limited fiscal resources. States and localities faced with these challenges need as many options as possible to deliver new and upgraded facilities. While the merits of foreign participation in financing must be judged on a case-by-case basis, the United States generally benefits when foreign capital is attracted to help finance critically needed infrastructure projects.

Question 3. Almost everything that gets to a consumer in this country rolls off of a truck. Clearly, tolls will drive up the cost of goods. Have you weighed the impact on the trucking industry and consumers as you advocate for an increase in tolling and public-private partnerships?

Answer. The trucking industry is a critically important element of the United States economy. As noted in the question, increased costs to the trucking industry are passed along to consumers in the form of higher prices, and virtually every consumer item spends some time on a truck. Pricing and public-private partnerships, however, offer states the opportunity to improve the reliability of the highway network, which can result in a reduction of costs for the trucking industry if the benefit of the time savings exceeds the cost of the highway pricing. That said, some states, like Indiana and Texas, have pursued tolling that will result in higher costs to truckers in certain parts of the state in order to provide infrastructure benefits in other areas. In any scenario, the cost to the trucking industry, and to consumers, should be considered whenever pricing or public-private partnerships are being weighed as options.

Question 4. In Arkansas, we have many transportation infrastructure needs across roads, rail, and rivers to meet current and future demands. Included in that list of needs are high-priority corridors I-69 and I-49. I was wondering if you were aware of these uncompleted corridors and if you had put any thought into how we can complete these projects in a timely and cost-effective manner?

Answer. Although I was the Federal Highway Administration Chief Counsel for a period of time several years ago, I do not have particular knowledge about the I-69 and I-49 corridors. I am told that the I-69 Corridor (Arkansas, Michigan, Indiana, Kentucky, Tennessee, Mississippi, Louisiana, and Texas) has been invited to participate in Phase 2 of the Department's Corridors of the Future competition. The Corridors of the Future competition is one element of the Department's Congestion Initiative, and is intended to streamline the advancement of three to five major growth corridors across the country. My view is that innovative approaches, such as the Corridors of the Future competition, are helpful to completing needed multi-state, multi-use transportation corridors such as I-69 and I-49.

Question 5. In addition to surface transportation facilities, is your current employer or any of its affiliates pursuing operational control of U.S. airports, maritime ports or utilities?

Answer. Yes. Macquarie invests in a wide variety of infrastructure assets and has investments in airports, ports, and utilities around the world.

Question 6. Do you believe that the DOT Commission set up under SAFETEA-LU (a Commission chaired by the Secretary and driven by DOT staff) is currently casting a wide-enough net reviewing all options for future infrastructure funding? Or is the Commission too narrowly focused on driving their desired results and focusing solely on PPPs as the end-all, be-all solution?

Answer. I have not been closely following the work of the Commission. However, having worked extensively with Secretary Peters in her former position as Administrator of the Federal Highway Administration, I am confident that, as Chairman of

the National Surface Transportation Policy and Revenue Study Commission, she is committed to an analytic process that addresses fully the range of options for future infrastructure funding.

Mexican Truck-Pilot Program

Question 7. In your time working in the private sector or in your service as General Counsel for the Federal Highway Administration, did you ever become involved in promoting cross-border trucking traffic between Mexico and the U.S. or Canada and the U.S.?

Answer. I was not directly involved in the effort to allow Mexican trucks on U.S. highways. During my time at FHWA, the Department was engaged in litigation on the environmental impact statement prepared by Federal Motor Carrier Safety Administration. I do not recall becoming involved in cross-border traffic between Mexico and the United States or Canada and the United States.

Question 8. Do you have an opinion on the Administration's current proposal (announced in February) for a pilot project to allow for Mexican trucks to operate beyond the current limit of the 25 mile commercial zones?

Answer. I do not have a personal opinion about the limited demonstration of long-haul operations across the southern border announced by the Department in February.

Question 9. Were you ever aware of this pilot project before it was announced on February 23rd?

Answer. No, I was not.

Union Contract Negotiations

Question 10. You mention in your testimony that you look forward to re-establishing your ties with union leaders. Given the FAA's recent inability to come to agreement with some of their labor unions, what role would DOT's General Counsel play in renegotiating agreements should Congress pass legislation that would force the differing parties back to the negotiating table?

Answer. My understanding is that, if legislation on this topic or any other that affected the Department of Transportation or its programs were enacted, the General Counsel would play a central role in ensuring that the Department follows the letter and spirit of the new enactment.

Conflict of Interest

Question 11. Your most recent employment was with Macquarie Infrastructure Group, principally as an advocate for private financing of infrastructure projects. As DOT Chief Counsel, do you plan to recuse yourself from advocating for projects, policies and legislative and regulatory initiatives that are likely to benefit Macquarie?

Answer. If confirmed as the General Counsel, I would strictly adhere to the applicable ethics rules governing conflicts of interest. In order to avoid even the appearance of a lack of impartiality, government employees who have worked outside of the Federal Government are required for a period of time to recuse themselves from participating in "particular matters" involving specific parties if their former employer is or represents one of the specific parties. See 5 CFR § 2635.502. While the rules do not prohibit participation in broad policy issues that may affect the interests of a large and diverse group, they clearly prohibit for a certain period any participation in particular matters to which the employee's former employer is a specific party. I would of course never participate in a decision in which the interests of any private entity are placed above the interests of the citizens of the United States. Having the opportunity to serve my country is a great honor and significant responsibility; I would treat it as such.