Assembly Special Committee on the Office of the Attorney General

Mr. Chairman and Members of this Special Committee,

It is a great honor for me to have an opportunity to come before you to testify in relation to my nomination by Governor Brown to serve as California’s next Attorney General. The responsibilities of our great State’s chief law enforcement officer and legal advocate are awesome and expansive. I look forward to demonstrating to you and my fellow Californians just how seriously I take this nomination and the prospect of ably serving my state at a time of promise and peril for us all.

Below I have articulated my thoughts and response to the important issue you have raised for consideration in preparation for this Committee’s nomination hearing. I look forward to our dialogue and the chance to work with you in the future to advance and protect the rights and interests of the People of California.

Sincerely,

Xavier Becerra

Member of Congress
I. Immigration

California is home to more than 10 million immigrants, 25 percent of the nation’s immigrant population. Immigrants in California are our family members, neighbors, classmates and coworkers. As a state, we recognize the significance of the contributions of immigrants and the role they play in the success of our state.

California has demonstrated national leadership in developing programs and policies that integrate immigrants. We have instituted programs to improve healthcare access, public safety, educational achievement, and workforce development. California has provided access to driver’s licenses for undocumented immigrants, an important policy that integrates immigrants and improves safety on the roads. We have provided access to higher education to undocumented students who attend California high schools, furthering the state’s commitment to develop a strong workforce. California has passed laws like the TRUST and TRUTH Acts to improve community policing. Our state has made significant investments in naturalization and legal services to help further the integration of immigrants. All of these policies and programs are representative of California’s values as a welcoming state.

As Attorney General, my job will be to protect and enforce the rights of the people of California, including those rights which were established to help weave California’s immigrants into its fabric. The task ahead will involve protecting the integrity and trust in California’s programs and providing unambiguous guidance to state and local agencies on how to do so. Most significantly, as Attorney General, my role will be that of defender of the constitutional rights of the people of California.

II. Constitutional/Civil Rights & 1st Amendment/Religious Freedom

As Attorney General, I will vigorously defend the First Amendment and article II, section 2 of the California Constitution, which also enshrines Californians’ right to free speech and the freedom of the press.

Disturbing statements uttered during the recent Presidential campaign have given rise to legitimate fears that the new federal administration might seek to adopt policies that would discriminate against people based on factors such as religious belief. Any such policies would be antithetical to the deepest constitutional values and traditions of this nation -- a nation founded in part by men and women fleeing religious persecution. Moreover, because these policies are
based on gross stereotypes rather than on rational criteria actually related to public safety, they would be not only wrong but ineffective -- as shown by the experience with the post-9/11 "National Security Entry-Exit Registration System," which was ultimately abandoned because it did not work.

This Legislature has already shown how important it is to California to protect our people from anti-immigrant measures that are misguided, invidious, and contrary to our national traditions. If I am confirmed, I look forward to working closely with you, the Governor, and others in state and local government to mount a vigorous offense to vanquish any new federal proposals attacking our First Amendment rights.

A. Reproductive Freedom

As a U.S. Representative I have strongly defended a women's right to choose. As Attorney General, I will be responsible for defending laws that guarantee Californians' access to reproductive healthcare, including access to contraceptives and abortion. I will vigorously defend these laws. Upon taking office I will consult with attorneys working on the cases involving reproductive freedom to ensure that we are implementing the litigation strategy I believe to be most appropriate.

B. Fighting Hate Crimes (Rapid Response Protocol)

The rise in hate crimes in the state, especially against those of a certain religious background, should be concerning to us all. California has strong laws that make it a crime to interfere, threaten, or oppress any person in the free exercise or enjoyment of any right or privilege because of the actual or perceived characteristics of that person, including disability, gender (including gender identity and expression), nationality, race or ethnicity, religion, or sexual orientation. Moreover, Penal Code section 422.6 provides that hate crimes can be used as a sentencing enhancement.

The responsibility for investigating and prosecuting hate crimes lies first and foremost with the local agencies of the jurisdiction in which the crime occurred. I intend to continue to foster DOJ's close coordinated partnership with local law enforcement agencies in this area. I would also want to continue to evaluate how best the Department of Justice can assist local agencies in swiftly investigating and prosecuting hate crimes. There may be times when it would be appropriate for the Department of Justice to file a civil action under the Ralph Act to redress hate-motivated crimes, as the office has done in the past. Another significant role of the DOJ has been to educate the public about the difference between hate crimes and hate incidents, and to actively encourage members of the public to report both crimes and incidents to local law enforcement.
As Attorney General I will put the full weight of my office behind concerted efforts to deter hate-motivated crime and to make clear that perpetrators of hate crimes will be punished to the full extent of the law.

C. Voting Rights

I am committed to encouraging voter participation and defending recently-enacted legislation that expands voter registration and access to polling locations. The California Secretary of State reports that, in 2016, 78 percent of California’s 25 million eligible adults were registered to vote. As Attorney General, I will ensure that the Department of Justice is a worthy partner providing all appropriate support to Secretary of State Alex Padilla on this critical issue. My office will also carefully evaluate any potential engagement on this issue in my independent capacity as Attorney General. I commit to utilize every tool within my authority to guarantee that every citizen in California may freely exercise her/his right to vote.

III. Environmental Protection

California has some of the strongest environmental laws in the nation. My job as Attorney General will be to continue to defend vigorously these laws to ensure that all Californians enjoy the benefits of public health, environmental quality and a vibrant economy. In working to protect the environment, the Attorney General’s Office plays an important role in numerous areas. I will highlight three here: climate change, environmental enforcement and safe drinking water.

The Attorney General, acting independently and representing state agencies, has an important role in the State’s efforts to combat climate change and transition Californians to a low-carbon way of life, thus helping to create 21st century jobs and grow the economy. As Attorney General, I intend to continue this work. This priority work would include defense of current programs, such as the Cap-and-Trade Program and the Low Carbon Fuel Standard. These and other efforts are part of the critical actions necessary to keep California on the path toward reducing environmental pollution. With a strong advocate for these programs in the Attorney General’s Office, California can do its part to avoid catastrophic climate change, while creating good jobs, strengthening the economy and improving public health for all residents of California.

I also intend to continue to pursue actions in support of the U.S. Environmental Protection Agency’s efforts to regulate greenhouse gas emissions. As Attorney General I will continue to be a strong voice in actions to support climate change efforts on a national level.

Second, as California’s Attorney General and as someone who has represented hard-working, modest-earning families for more than two decades, I will enforce the laws that protect California’s people, its environment and improve public health in all communities. Fair and uniform enforcement is important to protect California’s vulnerable communities, valuable natural resources and prevent exposure to pollution, as well as to preserve a level playing field for California businesses. I will use my authority as the state’s primary public prosecutor to
address significant environmental harms through enforcement actions brought under in my independent capacity or on behalf of state agencies.

Finally, if confirmed, I intend to use my authority to pursue the goal of providing safe drinking water to all Californians. Every Californian is entitled to safe, clean, affordable, and accessible water free from contamination. Despite the recognition of this right in statute, problems related to water supply, contamination, and treatment costs persist. Building on and enhancing actions that the Attorney General’s Office has brought in the past, I would continue to prioritize actions to ensure that public water systems are fulfilling their obligation to provide safe drinking water to all Californians.

IV. Police Accountability/Transparency and Public Protection

A. Independent Attorney General Investigation Authority

I believe that investigations into alleged police or prosecutorial misconduct, whether initiated by a local DA or the AG’s office, must be fair and respect due process, must give the public confidence that the investigations are impartial and unbiased, and must ensure that misconduct is addressed and remedied transparently and without undue delay. This is a matter of grave importance which is critical to upholding community trust in law enforcement. Handled properly, these investigations enable the vast majority of hardworking, professional law enforcement officers and prosecutors to do their jobs more effectively, while also bringing justice to victims of law enforcement overreach when it does occur.

The Attorney General has robust investigatory powers granted by article 5, section 13 of the State Constitution, as well as section 52.3 of the Civil Code. Where it can be shown that there is a pattern and practice of bias or misconduct in a local law enforcement agency or district attorney’s office, the AG’s powers of investigation are clear, and I intend to use those powers where justified. Prior Attorneys General have opened such investigations, including Attorney General Harris. I cannot comment on any open investigations, but I intend to review any such cases, once confirmed, to determine the most appropriate course of action.

I look forward to working closely with our partners in law enforcement and in local communities to ensure that we are all—both locally and at the state level—policing our communities in a manner that is fair and protective. It is my intent to help build and uphold bonds of trust and cooperation between our citizens and the agencies sworn to protect them.

B. Stop-and-Frisk Policies

I have heard the President-elect’s statements in support of so-called stop-and-frisk policies. I emphatically do not agree. Policies that target specific populations for pre-emptive searches based on general suspicion have been shown in New York and elsewhere to, not unexpectedly,
disproportionately target minority communities, specifically young men in specific neighborhoods where these policies have been implemented. This in turn, again not unexpectedly, has led to outrage and anger in these communities against law enforcement, which I believe contributes to the breakdown in trust that is critical for effective policing. The President-elect’s statements also come at an interesting time, given that a federal court has ruled that New York’s stop-and-frisk policy was carried out in an unconstitutional manner, and the program has been under review by a court-appointed monitor.

I have yet to hear anyone, including the President-elect, explain how such a policy based on preemptive universal suspicion can be carried out in a constitutional manner. But, in any case, I have no intention of allowing this policy through the doors of California. The Federal Government’s powers to force such a change at the State level or locally are very limited. If an attempt is made to do so, or if a threat of withholding federal funding is made to force such a change, I would treat this as a serious federal overreach into local law enforcement powers and would look forward to working with our Governor and the Legislature to fight vigorously to defeat such a policy.

C. Racial Profiling

A recurring theme in my philosophy of law enforcement—as I have discussed in previous responses and as will continue should I be sworn in as the State’s top law enforcement officer—is that it is critical for both law enforcement and the community they police to promote mutual respect and trust in the field. This is important both to ensure fair treatment for all of our citizens, but also to promote an environment where law enforcement can do its job effectively. Eliminating racial bias is one of the issues that is most crucial to promoting this mutual respect and trust. It is one that I view as critical to our state both as the son of Latino immigrants and as someone who firmly believes that our diversity is our strength. As we have seen over the last several years, when this trust breaks down the consequences can often be tragic and very troubling for all of us.

As far as AB 953, The Racial Identity and Profiling Act, is concerned, I look forward to working with the RIPA Board as well as the Legislature to ensure that the bill is implemented properly and in a way that provides critical information and reforms. I am aware of the recent release of proposed implementing regulations by DOJ and look forward to undertaking a thorough review of them if and when confirmed. I am aware of several outstanding issues that have been raised by various members of the RIPA board, including law enforcement, and I intend to take a comprehensive look at the proposals—acknowledging input from all parties—before moving forward with any final regulatory package.

D. Body Cameras and Public Access to Video

This is an issue which both law enforcement and reform advocates have attempted to address, and it has been difficult to reach consensus. I know that both DOJ and CHP are undertaking
what amount to pilot programs of sorts (CHP a formal pilot whose results we expect next fall, and DOJ an internal policy enacted by my predecessor). I eagerly look forward to learning what can be gleaned from these State programs so we can begin to articulate best practices or procedures that can and should be replicated.

I believe that body camera footage can be a helpful tool when examining use of force incidents or for other investigatory purposes. Again, as with many issues involving police practices and the use of force in general, I believe that due process for law enforcement and transparency, trust and oversight on behalf of the public are co-equal goals that must be balanced. I believe this is achievable and look forward to working with all stakeholders to ensure that we have a fair criminal justice system, whether it’s dealing with body cameras or any of the issues we have discussed today.

E. Firearm and Ammunition Regulation

The people of California and this Legislature have spoken on this issue. It is clear that the vast majority of Californians—I among them—support our robust gun control laws to help ensure that guns are kept out of the hands of those who shouldn’t have them wherever possible. We have seen the tragic results of gun violence in our state and country for far too long. I intend to do whatever is within in my power to protect the citizens of California from wanton gun violence. At the same time, I respect law abiding citizens’ right to bear arms and the long tradition of lawful gun ownership for self-defense and sporting purposes in this country. As Attorney General, I will continue to support the department’s efforts to enforce California’s firearms laws in a manner that is as clear, straightforward and fair to law abiding citizens as possible.

F. Bail Reform – effect on indigent defendants

I believe there are inequities in our current bail system that merit serious examination. I am eager to learn more about the many details that will be crucial to the discussion around bail reform. I am also eager to learn more about what changes the legislature will be contemplating. I stand ready to engage with you all on the issue. It really boils down to whether we have a fundamentally fair criminal justice system in California, and whether all Californians are treated equally by the system. Bail is an important piece of that puzzle, but by no means the only one.

This may be a lengthy discussion given the constitutional constraints around what can be done with bail, and also the differing models in other states that may offer guidance in reforming California’s system. It is a discussion whose time has come and that is worth getting right.

G. Cal Gang Criminal Intelligence System
I believe that information used by law enforcement to investigate crimes should be of the highest quality. In preparation for this hearing, I have had a chance to review the State Auditor’s report on the Cal Gang system. I do not believe that we currently have a system that ensures the utility and quality of information for law enforcement purposes. Nor have there been adequate protections for citizens in the past to ensure people are not unfairly targeted as gang members based on inadequate information, or even more alarmingly, simple geography or associations. If confirmed, I plan to work with you in the Legislature and stakeholders to review the structure and oversight of the current database to ensure that citizens’ rights are protected and that law enforcement is receiving the quality, actionable, and defensible information it needs to keep our communities safe.

V. Consumer Protection

A. Consumer Privacy and Data Protection: on-line information protection; government data

Californians have a constitutionally guaranteed right to privacy, and protecting their privacy rights will be one of my top priorities. Today, we share and store our most sensitive personal information on phones, computers and virtual networks. State and local governments are likewise entrusted with our most personal information. More than ever, a strong privacy program, which includes data security, is essential to the safety and welfare of the people of California and to our economy.

I will use the resources of the California Department of Justice to enforce state and federal privacy laws, educate state and local leaders on cyber-security best practices, encourage businesses to follow privacy-respectful best practices, and to advise me on privacy matters.

B. Private Attorney General Act

California adopted a novel approach to enforcing the Labor Code of California when it enacted the Private Attorney General Act of 2004 (“PAGA”). PAGA allows a private citizen to pursue civil penalties on behalf of the State of California Labor and Workforce Development Agency (LWDA), provided that certain notice procedures are followed.

PAGA gives a private citizen the right to pursue fines that would normally only be available to the State of California. As a “private attorney general,” the aggrieved employee is allowed to seek civil penalties not only for violations that he or she personally suffered, but also for violations of “other current or former employees.” Any resulting civil penalties are split between the LWDA and the employee with the LWDA receiving 75% of the penalties and the employee receiving 25%.

Although the Attorney General has no role in the PAGA process, I recognize that PAGA case filings have increased in recent years and that legislative reforms have been enacted as recently
as 2016. I look forward to working with the Brown Administration and the Legislature to determine whether further reforms are warranted.

C. Mortgage Foreclosure Relief

When it comes to having a sense of security, there is no place more sacred than a person’s home. To mitigate losses suffered by homeowners victimized by deceptive lending practices during the mortgage and foreclosure crisis, Attorney General Harris joined with dozens of states and the federal government to obtain broad-ranging settlements from several major banks. These settlements provided benefits to homeowners that include reductions in principal balances, reductions in interest rates, cash payments to homeowners who were wrongly foreclosed upon, and loan modification relief.

I will use the civil, law enforcement, and prosecutorial resources of the Department of Justice to protect homeowners by enforcing state laws that prohibit unfair or unlawful business practices and false advertising, policing lenders, seeking financial relief for families victimized by predatory lending practices, and prosecuting individuals who target vulnerable homeowners.

D. Elder Abuse: financial fraud and nursing home regulation

California faces a rapidly growing and increasingly vulnerable senior population. To protect our most vulnerable citizens and help safeguard the state's Medi-Cal program, the Attorney General's Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA) must work aggressively to investigate and prosecute those who would harm or defraud the elderly, rob taxpayers of millions of dollars each year, and divert scarce health care resources from the needy. BMFEA must also work aggressively to protect patients in nursing homes and other long-term care facilities from abuse or neglect.

If confirmed, I will review the Bureau’s work and continue to use the weight of my office to protect the State's most vulnerable people.