Nomination of Arthur Marvin Quattlebaum, Jr. to the United States Court of Appeals for the Fourth Circuit
Questions for the Record June 27, 2018

QUESTIONS FROM SENATOR FEINSTEIN

1. Please respond with your views on the proper application of precedent by judges.

    a. **When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?**

    It is never appropriate for lower courts to depart from Supreme Court precedent.

    b. **Do you believe it is proper for a circuit court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?**

    Circuit courts are bound to follow Supreme Court precedent regardless of whether they agree or have questions about the precedent. In limited circumstances, it can be appropriate for a lower court to draw certain issues to the attention of the Supreme Court for the goal of the improvement of the law.

    c. **When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?**

Respectfully, the decision as to whether to overturn its precedent rests with the Supreme Court and it would not be appropriate for a lower court judge to comment on when or how that should be done.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

    a. **Do you agree that *Roe v. Wade* is "super-stare decisis"? Do you agree it is "superprecedent"?**

    Roe v. Wade is binding precedent. As a lower court judge, I am obligated to follow *Roe v. Wade* like all Supreme Court precedent and will, if confirmed, faithfully do so.

b. Is it settled law?

Yes.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry.

a. Is the holding in *Obergefell* settled law?

Yes.

4. In Justice Stevens's dissent in *District of Columbia v. Heller* he wrote: "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

a. Do you agree with Justice Stevens? Why or why not?

Respectfully, as a sitting district court judge, I am prohibited by the Judicial Canons from giving an opinion on the merits of a Supreme Court opinion whether it is a majority, concurring or dissenting opinion. As a lower court judge, I am obligated to follow Supreme Court precedent and will faithfully do so.

b. Did *Heller* leave room for common-sense gun regulation?

The Supreme Court in *Heller* expressly discussed the fact that the decision was not unlimited and that was not intended to undermine firearm regulations relating to felons or those with mental illness and relating to certain sensitive geographic locations.

c. Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?

The Supreme Court in *Heller* said its decision addressed issues that were "judicially unresolved."

5. You were confirmed to the United States District Court for the District of South Carolina on March 1, 2018. Before your confirmation, and according to your Questionnaire, you spent most of your career as a trial litigator.

a. How many times have you appeared in a federal appellate court on behalf of a client?

As this question notes, most of my practice related to trial court work. However, part of that practice involved the constant analysis and evaluation of appellate issues in cases including the standard of review of such issues. My prior firm had an appellate practice group that handled most appeals. Consequently, my appellate work was limited. However, I was lead counsel in the appeal to the Third Circuit of an order granting summary judgment in a contract dispute and argued the appeal. The name of the case was *Bayer Chemicals Corp. v. Albermarle Corp.*, 171 F. App'x 392 (3d Cir. 2006).

b. How many times have you participated in oral arguments in federal appellate court on behalf of a client?

Please see my response to question 5.a.

c. Please identify each state and federal appellate case you have been involved in on behalf of a client and state your role in each case.

In addition to my response to question 5.a.,

1. *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors, Inc.*, No. 6:92-cv-2095-HMH (D.S.C.), *aff'd*, 99 F.3d 587 (4th Cir. 1996); parallel proceedings sub nom. *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, No. 6:94-cv-00300-HMH, Dkt. No. 54 (D.S.C. Dec. 8, 1994) (certifying question to South Carolina Supreme Court), certified question answered by 462 S.E.2d 859 (S.C. 1995). I participated in the trial of the case, the drafting of the appellate briefs and the appellate strategy.

2. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1357–58 (Fed. Cir. 2006). I participated in the trial of the case, the drafting of the appellate briefs and the appellate strategy.
3. *Ex parte Michelin N. Am., Inc. (In re Betty C. Brown, individually and as personal representative of the Estate of George Alvin Brown, deceased v. Michelin North America, Inc., et al.*, 161 So. 3d 164 (Ala. 2014). I was not counsel of record on this case. However, I worked on the case on behalf of Michelin North America, Inc. providing editorial and strategic advice concerning the briefs.
4. *Campbell v. Caligiuri,* No. 2005-UP-044, 2005 WL 7082919 (S.C. Ct. App. Jan. 19, 2005). I participated in the trial of the case, the drafting of the appellate briefs and the appellate strategy, and was lead counsel on the appeal and oral argument.
5. *Maher v. Tietex Corp.*, 331 S.C. 371, 375, 500 S.E.2d 204, 206 (S.C. Ct. App. 1998). I participated in the trial of the case, the drafting of the appellate briefs and the appellate strategy.
6. *Albemarle Corporation v. AstraZeneca UK Ltd.*, No. 10-01000 (4th Cir. Dec. 8, 2010). I was lead trial counsel in this case, the drafting of the appellate briefs and the appellate strategy.
7. *First Union Commercial Corp. v. Nelson Mullins Riley and Scarborough LLP*, No. 95-01950 (4th Cir.). I participated in the trial of this case, the drafting of the appellate briefs and the appellate strategy.
8. *Spartan Mills v. Bank of America Illinois*, No. 96-01760, 112 F.3d 1251 (4th Cir. May 6, 1997). I participated in the trial of this case, the drafting of the appellate briefs and the appellate strategy.
9. *Kennedy v. First Omni Bank,* No. 98-2540 (4th Cir.). I participated in the trial of this case, the drafting of the appellate briefs and the appellate strategy.
10. Also, I supervised numerous lawyers at my former law firm regarding appellate issues related to their cases.

In an effort to be responsive to Question 5.a.-c., I have compiled the list above based on my records and best recollection of matters in which I have been involved.

d. What steps are you undertaking to prepare to assume the responsibilities of a federal appellate court judge, if you are confirmed? Specifically, what steps are you undertaking to prepare yourself with the different standards of review employed by federal appellate courts?

On almost a daily basis, I read Fourth Circuit opinions in order keep apprised of the law related to my duties as a District Court Judge. This effort also informs me of the standards of review applied by the federal appellate courts. As with any area of the law I have encountered during my over 25 years of litigation work and my work since becoming a district court judge, I will continue to work hard to stay abreast of the applicable legal principles needed to effectively carry out the duties of a circuit court judge if confirmed.

e. How will you familiarize yourself with the requirements of the Federal Rules of Appellate Procedure and the Local Rules of the Fourth Circuit?

I will address this in multiple ways. Consistent with my response to question 5.d. above, I will continuously study those rules and cases applicable to them as I do with the Federal

Rules of Civil Procedure and Local Rules of the United States District Court of the District of South Carolina. My experience has been that even with years of experience as a trial lawyer, I encountered procedural and substantive law issues that needed close attention and analysis. I did that as a lawyer, am doing it as a District Court Judge and will do it as a Circuit Court Judge if confirmed.

6. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), White House Counsel Don McGahn told the audience about the Administration's interview process for judicial nominees. He said: "On the judicial piece … one of the things we interview on is their views on administrative law. And what you're seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years…"

   a. Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?

   No.

   b. Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?

   No.

   c. What are your "views on administrative law"?

   As a lower court judge, I will follow the precedent from the Supreme Court and the Fourth Circuit on administrative law as I will with other areas of the law.

7. When is it appropriate for judges to consider legislative history in construing a statute?

   In my experience, the consideration of legislative history depends on the circumstances of the case at issue. In construing a statute, I start with the text and with binding precedent. I also look at other persuasive authority. At times, I will consider legislative history especially if the text is ambiguous.

8. At any point during the process that led to your nomination, did you have any discussions with anyone — including but not limited to individuals at the White House, at the Justice Department, or at outside groups — about loyalty to President Trump? If so, please elaborate.

No.

9. Please describe with particularity the process by which you answered these questions.

I received the questions from the Department of Justice. I drafted responses. I shared my responses with the Department of Justice. I received limited editorial comments, some of which I adopted.

Nomination of A. Marvin Quattlebaum to the
United States Court of Appeals
For the Fourth Circuit
Questions for the Record
Submitted June 27, 2018

QUESTIONS FROM SENATOR WHITEHOUSE

1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying "'[m]y job is to call balls and strikes and not to pitch or bat."

    a. Do you agree with Justice Roberts' metaphor? Why or why not?

    Justice Roberts' metaphor is helpful because an umpire does not make rules; he or she applies them. Likewise, a judge does not enact laws. He or she should apply the law as enacted by Congress. And in applying the law, the judge must follow precedent of the Supreme Court and, in this case, the United States Court of Appeals for the Fourth Circuit.

    An umpire should call balls and strikes the same for all players. Similarly, a judge should apply the law impartially and fairly regardless of the party.

    b. What role, if any, should the practical consequences of a particular ruling play in a judge's rendering of a decision?

    It is difficult to answer this question in the abstract. In general, a judge may consider the practical consequences of a particular ruling, but any consideration of the consequences cannot control the outcome of the case. Judges are not policymakers. If confirmed, I will faithfully apply the laws enacted by Congress and I will follow the applicable precedent wherever the law takes the case.

2. During Justice Sotomayor's confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance "to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old."

    a. What role, if any, should empathy play in a judge's decision-making process?

    Judges are human beings and may at times have empathy for certain parties or about the outcome of the cases they handle. But all federal judges take an oath to "administer justice without respect to persons, and do equal right to the poor and to the rich." 28 U.S.C. § 453. If I am confirmed, I will abide by that oath, and I will faithfully and impartially apply the law.

    b. What role, if any, should a judge's personal life experience play in his or her decision-making process?

    Any judge comes to the position with his or her life experiences and perspectives.

However, the judge should put those perspectives aside and apply the applicable law to the facts of the case independently, fairly and impartially.

3. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

   No.

4. What assurance can you provide this committee and the American people that you would, as a federal judge, equally uphold the interests of the "little guy," specifically litigants who do not have the same kind of resources to spend on their legal representation as large corporations?

   In my current role as a United States District Judge for the District of South Carolina, I took an oath to "administer justice without respect to persons, and do equal right to the poor and to the rich." 28 U.S.C. § 453. I have respected that oath as a district court judge and will continue to do so if I am confirmed to be a federal circuit judge. In addition, as a practicing attorney, I represented a wide range of clients from large corporations, to non-profit foundations, to individuals sued by the Department of Social Services to terminate parental rights. I have also represented individuals in Chapter 7 bankruptcies. In each instance, I gave each client my best work, time and attention, regardless of resources or background.

Senate Judiciary Committee
"Nominations"
Questions for the Record
June 20, 2018
Senator Amy Klobuchar

Questions for Marvin Quattlebaum, Nominee to the Fourth Circuit Court of Appeals

- How would you view the importance of adhering to precedent – even precedent where you felt that the case was wrongly decided – if you are confirmed to the Fourth Circuit?

  If I am confirmed as a circuit judge, I will apply the Supreme Court and Fourth Circuit precedent faithfully.

- If you are confirmed, you will be hearing cases as part of a panel of judges. In your view, is there value in finding common ground – even if it is slightly narrower in scope – to get to a unanimous opinion on appellate courts?

  Attempting to achieve consensus is a worthy goal. As a circuit court judge, I believe it should be pursued. However, if a judge is unable in good conscious to join in the majority, a dissenting opinion is of course appropriate. Likewise, if a circuit court judge is unable in good conscience to join in the reasoning of the majority, but joins in the result, a concurring opinion is appropriate.

Nomination of A. Marvin Quattlebaum, Jr., to be United States Circuit Judge for the Fourth Circuit
Questions for the
Record Submitted
June 27, 2018

QUESTIONS FROM SENATOR COONS

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

   I would consider all factors set forth by the relevant Supreme Court and Fourth Circuit precedent for determining whether a right is fundamental and protected by the Fourteenth Amendment.

   a. Would you consider whether the right is expressly enumerated in the Constitution?

      Yes.

   b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

      Yes.

   c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of another court of appeals?

      Yes. If there was no relevant precedent from the Supreme Court or the Fourth Circuit, I would consider opinions from other circuits as persuasive authority.

   d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent?

      Yes.

   e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? *See Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

      If confirmed, I would follow *Casey* and *Lawrence* as they are binding precedent of the Supreme Court.

   f. What other factors would you consider?

If confirmed, I would consider other factors called for in precedent from the Supreme Court and the Fourth Circuit.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?
Under binding Supreme Court precedent, the Fourteenth Amendment's equal protection rights apply to race and gender.

   a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

      I would respond by pointing out that the Supreme Court has held that the Fourteenth Amendment's equal protection rights apply to gender as well as race. If confirmed, I will apply that binding precedent.

   b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia,* 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

      I do not know the answer to this question. However, if confirmed, I will follow the binding precedent of the Supreme Court including *United States v. Virginia*.

   c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

      In *Obergefell*, the Supreme Court held that same sex couples have the same rights to marry as heterosexual couples. If confirmed, I will apply that binding precedent.

   d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

      This issue is the subject of current pending litigation. Therefore, respectfully, as a sitting judge, I am prohibited by the Judicial Canons from responding to this question.

3. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

   Yes, based on the Supreme Court's decisions in *Griswold* and *Eisenstadt*. If confirmed, I will apply such binding precedent.

   a. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

Yes, based on the Supreme Court's decisions in *Roe*, *Casey* and their progeny. If confirmed, I will apply that binding precedent.

b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

In *Lawrence*, the Supreme Court held that the Fourteenth Amendment provides consenting adults with privacy rights related to intimate relations. In *Obergefell*, the Supreme Court held that same sex couples have the same rights to marry as heterosexual couples. If confirmed, I will apply this binding precedent.

c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

See answers to 3a and 3b above.

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600-01 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

When doing so is consistent with Supreme Court and Fourth Circuit precedent. Just one example of this is *Riley v. California* where the Supreme Court applied Fourth Amendment principles to new cell phone technology.

b. What is the role of sociology, scientific evidence, and data in judicial analysis?

This question is difficult to answer in the abstract. The question of the role of the types of information mentioned would depend on how they were sought to be used in a case. However, the Federal Rules of Evidence and precedent from the Supreme Court and Fourth Circuit would guide decisions about their use in a particular case. For example, such evidence of sometimes used by expert witness testimony. The Federal Rules of Evidence and the decisions from the Supreme Court and Fourth Circuit have interpreted

the Rules in a way that would govern decisions about the use of such information in a particular case.

5. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the "circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light" on the amendment's original meaning, "it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." 347 U.S. at 489, 490-93.

   a. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

      I have not previously considered whether *Brown* is consistent with originalism. *Brown* is binding precedent of the Supreme Court of the United States and if confirmed, I will apply it as such.

   b. How do you respond to the criticism of originalism that terms like "'the freedom of speech,' 'equal protection,' and 'due process of law' are not precise or self-defining"? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism (last visited June 18, 2018).

      If confirmed as a circuit judge for the Fourth Circuit, I will apply the definitions and understanding of these terms as set forth by the Supreme Court and Fourth Circuit as those courts have interpreted the core tenant of the Constitution of the United States.

   c. Should the public's understanding of a constitutional provision's meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

      If confirmed as a circuit judge for the Fourth Circuit, I would be bound to apply the understanding of a constitutional provision as interpreted by the Supreme Court and Fourth Circuit.

   d. Does the public's original understanding of the scope of a constitutional provision constrain its application decades later?

      See answers to 5 (c) above.

   e. What sources would you employ to discern the contours of a constitutional provision?

      To discern the contours of a constitutional provision I would refer to the text of the

Constitution itself as well as Supreme Court and Fourth Circuit precedent interpreting those provisions.

Senator Mazie K. Hirono
Questions for the Record for Marvin Quattlebaum, Jr.

In *Laird v. Tatum*, 409 U.S. 824 (1972), then-Justice Rehnquist stated the following:

> "Since most justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formulated at least some tentative notions which would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another.
>
> "It would be not merely unusual, but extraordinary, if they had not at least given opinions as to constitutional issues in their previous legal careers. Proof that a Justice's mind at the time he joined the Court was a complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias."

In the above statements, Chief Justice Rehnquist acknowledges that the notions and experiences that judges have developed over the course of their lives influence their interpretation of the Constitution.

a. Do you agree with Chief Justice Rehnquist's observations? Do you believe that there will be times on the bench that a judge will bring personal experiences and views to bear on their decisions?

Any judge comes to the position with his or her life experiences and perspectives. However, the judge should put those perspectives aside and apply the applicable law to the facts of the case independently, fairly and impartially.

b. If judicial nominees have set forth legal inclinations and interpretations in their work, do you believe that this naturally has to have a bearing on what they would do as a judge, and how they would apply the law?

Judges should put their personal life experiences and perspectives aside and resolve pending matters in light of Supreme Court and circuit court precedent, without regard to their own policy, personal or political opinions and preferences.

c. What does Justice Rehnquist's observation suggest about reassurances from judicial nominees that they will simply apply precedent, particularly in areas where many have strong convictions, or in circumstances where the facts of a case do not line up precisely with a precedent and a judge has discretion in what precedent to apply and how it would apply?

Of course judges are human beings, however, a judge is required to "faithfully and impartially discharge and perform" his or her duties in accordance with 28 U.S.C. § 453. A judge should apply the law to the facts of the case independently, fairly and impartially. A judge should uphold the law without regard to their personal preferences and feelings.

Nomination of A. Marvin Quattlebaum
United States Circuit Court for the Fourth Circuit
Questions for the Record
Submitted June 27, 2018

QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institute study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.[1] Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.[2] These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.[3] In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.[4]

    a. Do you believe there is implicit racial bias in our criminal justice system?

    I have not studied the specific issue of implicit bias in our judicial system. However, I am generally aware of studies that show disproportionate arrests and sentencing relating to minorities. I have taken part in training on implicit bias as a District Court Judge. Also, before becoming a judge, I participated in implicit bias training with my former firm.

    b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

    Yes.

    c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

    Please see my response to question 1.a.

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.[5] In the 10 states that

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[1] JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), *available at* https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/.
[2] *Id.*
[3] ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), *available at* http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/.
[4] *Id.* at 8.
[5] THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), *available at*

saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.[6]

a. Do you believe there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I have not studied or reviewed the referenced fact sheet. Respectfully, as a sitting judge, the Judicial Canons prohibit me commenting further on this political/policy issue.

b. Do you believe there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

Please see my response to question 2.a.

3. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

Yes.

4. Since Shelby County, Alabama v. Holder, states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate someone voter at the polls.[7] One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.[8] Despite this, President Trump, citing no information, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?

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http://www.pewtrusts.org/~/media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

[6] *Id.*

[7] JUSTIN LEVITT, THE TRUTH ABOUT VOTER FRAUD, BRENNAN CENTER FOR JUSTICE 6 (2007), *available at* http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf.

[8] Justin Levitt, *A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast*, THE WASHINGTON POST, Aug. 6, 2014, *available at* https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.4da3c22d7dca.

Respectfully, I believe the issue raised in this question is the subject of ongoing litigation and political/policy debate. As a sitting judge, the Judicial Canons prohibit me from commenting on such issues.

b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?

Please see my response to question 4.a.

c. Do you believe that restrictive voter ID laws suppress the vote in poor and minority communities?

Please see my response to question 4.a.

5. The color of a criminal defendant plays a significant role in capital punishment cases. For instance, people of color have accounted for 43 percent of total executions since 1976 and 55 percent of those currently awaiting the death penalty.[9]

a. Do those statistics alarm you?

I have not studied the statistics cited in the question or the data in which such statistics are contained. However, all laws, including those related to capital punishment, should be applied without regard to race. The oath I have taken as a District Court Judge requires this and I have carried it out. If confirmed as a circuit court judge, I will continue to do so.

b. Do you believe it is cruel and unusual to disproportionately apply the death penalty on people of color in compared to whites? Why not?

Please see my response to question 5.a.

c. The color of the victim also plays an important role in determining whether the death penalty applies in a particular case. White victims account for about half of all murder victims, but 80 percent of all death penalty cases involve white victims. If you were a judge, and those statistics were playing out in your courtroom, what would you do?

Please see my response to question 5.a.

[9] The American Civil Liberties Association, Race and the Death Penalty, https://www.aclu.org/other/race-and-death-penalty (Last visited June 13, 2018).

Questions for the Record from Senator Kamala D. Harris
Submitted June 27, 2018
For the Nominations of

Marvin Quattlebaum, Jr., to be United States Circuit Judge for the Fourth Circuit

- In your Senate Judiciary Committee hearing, Senator Kennedy asked you about the state of the law for those who cite their religious beliefs in refusing to obey the law. In your response, you referenced the Supreme Court's recent decision in *Masterpiece Cakeshop*.

- **Is it your belief that the Court's decision in *Masterpiece* allows business owners to deny service to LGBTQ people based on the business owners' religious beliefs?**

In *Masterpiece*, the bakery owner told a same-sex couple that he was unable to create a wedding cake because of his religious opposition to same-sex marriage. The Colorado Civil Rights Commission found that the bakery owner's refusal to create the wedding cake violated the Colorado Anti-Discrimination Act. An administrative law judge affirmed the Commission. The Supreme Court said the Commission's actions violated the First Amendment free exercise clause. The bakery owner, however, did not deny service to the same-sex couple generally. Based on the facts in the case, the bakery owner expressed a willingness to sell other baked goods to same-sex couples.