

**Nomination of John Leonard Badalamenti to the United States District Court for the  
Middle District of Florida  
Questions for the Record  
Submitted February 19, 2020**

**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 unless the Supreme Court itself has overturned it. “[T]he lower courts are bound by” the Supreme Court’s decisions “until such time as the Court informs [them] that [they] are not.” *Hicks v. Miranda*, 422 U.S. 332, 344–45 (1975).

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

Unless sitting by designation on a court of appeals or on a specially constituted three-judge panel of the district court, district judges do not author concurring or dissenting opinions. A district court judge is required to fully and faithfully apply all Supreme Court precedent, and any order or opinion must be written in a manner consistent with that duty.

**c. When, in your view, is it appropriate for a district court to overturn its own precedent?**

The Supreme Court stated that a decision of “[a] federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.” *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (internal quotation omitted). Accordingly, except for those situations permitted by rule, such as a properly filed motions for relief from, or to alter, a judgment pursuant to Federal Rules of Civil Procedure 59 and 60, I am unable to identify a situation where a district court is creating precedent such that it may overturn itself in the first instance.

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

This is a matter for the consideration and purview of the Supreme Court. All inferior courts are bound to fully and faithfully apply all Supreme Court precedent.

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”?**

All Supreme Court precedent, including *Roe v. Wade*, is binding on all lower courts and must be fully and faithfully applied. No matter how one labels a particular Supreme Court precedent, all Supreme Court precedent must be fully and faithfully followed by lower courts.

**b. Is it settled law?**

Yes. If confirmed, I will fully and faithfully apply *Roe v. Wade* and all Supreme Court and Eleventh Circuit precedent.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. Is the holding in *Obergefell* settled law?

Yes. If confirmed, I will fully and faithfully apply *Obergefell* and all Supreme Court and Eleventh Circuit precedent.

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?**

It would not be appropriate for me, as a nominee to an inferior federal court, to opine on the correctness of Supreme Court precedent or the legal reasoning therein. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C). If confirmed, I will fully and faithfully apply *Heller* and all other Supreme Court and Eleventh Circuit precedent.

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

In *District of Columbia v. Heller*, the Supreme Court stated that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” 554 U.S. 570, 626–27 (2008).

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

The majority opinion in *Heller* stated that the Court was resolving an issue previously unresolved by the courts. It concluded as follows: "We conclude that nothing in our precedents forecloses our adoption of the original understanding of the Second Amendment. It should be unsurprising that such a significant matter has been for so long judicially unresolved. For most of our history, the Bill of Rights was not thought applicable to the States, and the Federal Government did not significantly regulate the possession of firearms by law-abiding citizens." *Heller*, 554 U.S. 570, 625 (2008).

5. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

**a. Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?**

In *Citizens United v. FEC*, 558 U.S. 310, 342 (2010), the Supreme Court stated that “First Amendment protection extends to corporations.” If confirmed, I would fully and faithfully apply all Supreme Court and Eleventh Circuit precedent.

**b. Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?**

Please see my response to question 7.a.

**c. Do you believe corporations also have a right to freedom of religion under the First Amendment?**

In several cases, the Supreme Court has protected the free exercise of religion of associations and organizations. See, e.g., *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018); *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171 (2012); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). If confirmed, I will faithfully follow this and all other binding precedent.

6. Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?

The Fourteenth Amendment states, in relevant part, “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” This provision protects the free exercise of religion. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940). The contours of that protection are set forth in Supreme Court and Eleventh Circuit precedent, which I would faithfully follow.

7. **Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk’s sincerely held religious beliefs?**

The Supreme Court has held that state laws prohibiting interracial marriage violate the Equal Protection Clause. *See Loving v. Virginia*, 388 U.S. 1, 12 (1967). Otherwise, as a judicial nominee, it would be inappropriate to comment on issues that may be the subject of pending or impending litigation. *See Code of Conduct for United States Judges*, Canons 2(A), 3(A)(6), and 5(C). If confirmed, I will fully and faithfully apply all Supreme Court and Eleventh Circuit precedent, including *Loving v. Virginia*. Please also see my response to Question 6 above.

8. **Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist’s sincerely held religious beliefs?**

The question whether the First Amendment limits the permissible scope of public-accommodation laws as applied to persons with sincerely held religious beliefs is the subject of pending and impending litigation. Thus, as a judicial nominee, it would be inappropriate for me to express a personal belief on the issue. *See Code of Conduct for United States Judges*, Canons 2(A), 3(A)(6), and 5(C). If confirmed, I will fully and faithfully apply all Supreme Court and Eleventh Circuit precedent.

9. **You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 2012. The Federalist Society’s “About Us” webpage explains the purpose of the organization as follows: “Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law.” It says that the Federalist Society seeks to “reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community.”**

- a. Could you please elaborate on the “form of orthodox liberal ideology which advocates a centralized and uniform society” that the Federalist Society claims dominates law schools?**

I did not make the above-referenced statement and it is not familiar to me. I do not recall hearing that statement at any Federalist Society event I have attended. I do not know what the Federalist Society means by it.

- b. How exactly does the Federalist Society seek to “reorder priorities within the legal system”?**

Please see response to question 9.a. above.

- c. What “traditional values” does the Federalist society seek to place a premium on?**

Please see response to question 9.a. above.

- d. Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.**

I have not had contact with someone at the Federalist Society regarding my nomination. I have discussed my possible nomination with many individuals over the years; some may be members of the Federalist Society.

- 10. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former 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?**

Not that I recall.

- 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?**

Not that I recall.

**c. What are your “views on administrative law”?**

I have not studied administrative law since law school. The overwhelming majority of my law practice involved federal indigent criminal defense. And I adjudicated relatively few administrative law cases as a state appellate judge because, in part, most administrative law cases are handled by the Florida First District Court of Appeal based in Tallahassee. If confirmed, I will fully and faithfully apply Supreme Court and Eleventh Circuit precedent involving administrative law.

**11. Do you believe that human activity is contributing to or causing climate change?**

I have not studied this issue. In any event, as a nominee, it would be inappropriate to express my personal beliefs on political issues. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C).

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

If confirmed, I would only consider legislative history in construing a statute when the Supreme Court or Eleventh Circuit precedent instructs it is permissible to do so, such as when the language of the statute is ambiguous. *Cf. Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 567-71 (2005) (“As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.”).

**13. 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 any outside groups — about loyalty to President Trump? If so, please elaborate.**

No.

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

After receiving the questions from the Department of Justice’s Office of Legal Policy (OLP), I carefully reviewed them. I then reviewed my own Senate Judiciary Committee Questionnaire, conducted legal research to identify applicable case law, consulted state

and federal judicial canons, and drafted my responses. I forwarded those responses to OLP staff, and subsequently finalized my responses. I then provided my authorization for OLP to file my responses on my behalf.

**Written Questions for John Badalamenti**  
**Submitted by Senator Patrick Leahy**  
**February 19, 2020**

1. Just last year, you concurred in an opinion that refused to find valid under Florida law a co-parenting agreement between a same-sex couple.

- (a) **What role do you believe judges have in applying and extending equal protection under the law?**

If confirmed as a district judge, it would be my duty in this area of the law—as in all others—to faithfully apply binding precedent of the Supreme Court and Eleventh Circuit.

- (b) **In a 2011 interview, Justice Scalia argued that the Equal Protection Clause does not extend to women. Do you agree with that view? Does the Constitution permit discrimination against women?**

The Supreme Court has held that the Fourteenth Amendment’s Equal Protection Clause generally forbids government discrimination on the basis of sex. *See, e.g., United States v. Virginia*, 518 U.S. 515 (1996).

2. Chief Justice Roberts wrote in *King v. Burwell* that

“oftentimes the ‘meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.’ So when deciding whether the language is plain, we must read the words ‘in their context and with a view to their place in the overall statutory scheme.’ Our duty, after all, is ‘to construe statutes, not isolated provisions.’”

- (a) **Do you agree with the Chief Justice? Will you adhere to that rule of statutory interpretation – that is, to examine the entire statute rather than immediately reaching for a dictionary?**

Yes. The Supreme Court has instructed that in statutory interpretation, it is proper to consider the words of a provision within the broader context of the statute as a whole. *See, e.g., Sturgeon v. Frost*, 139 S. Ct. 1066, 1084 (2019); *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1010 (2017). If confirmed, I will fully and faithfully apply Supreme Court and Eleventh Circuit precedent on all on issues, including statutory interpretation.

3. President Trump has issued several attacks on the independent judiciary. Justice Gorsuch called them “disheartening” and “demoralizing.”

- (b) **Does that kind of rhetoric from a President – that a judge who rules against him is a “so-called judge” – erode respect for the rule of law?**



Judicial independence is enshrined into our constitutional structure and is foundational to our system of government. Judges protect this independence by acting within their role in our constitutional framework, which maintains the public's confidence in the integrity of the judiciary. As a judicial nominee, however, it would be inappropriate for me to comment on any statements that are, or have been, the subject of political debate. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C).

**(c) While anyone can criticize the merits of a court's decision, do you believe that it is ever appropriate to criticize the legitimacy of a judge or court?**

Please see my response to question 3(b) above.

4. President Trump praised one of his advisers after that adviser stated during a television interview that "the powers of the president to protect our country are very substantial *and will not be questioned.*" (Emphasis added.)

**(a) Is there any constitutional provision or Supreme Court precedent precluding judicial review of national security decisions?**

The Supreme Court has reviewed presidential actions taken during military conflict or for national defense. *See, e.g., Hamdan v. Rumsfeld*, 548 U.S. 557 (2006); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

5. Many are concerned that the White House's denouncement of "judicial supremacy" was an attempt to signal that the President can ignore judicial orders.

**(a) If this president, any future president, or any other executive branch official refuses to comply with a court order, how should the courts respond?**

A government official's disregard of a court order is an issue that any court would take seriously. But as a judicial nominee, it would be inappropriate for me to preview how I might rule in a hypothetical future case. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C).

6. In *Hamdan v. Rumsfeld*, the Supreme Court recognized that the President "may not disregard limitations the Congress has, in the proper exercise of its own war powers, placed on his powers."

**(a) Do you agree that the Constitution provides Congress with its own war powers and Congress may exercise these powers to restrict the President – even in a time of war?**

Justice O'Connor famously wrote in her majority opinion in *Hamdi v. Rumsfeld* that: "We have long since made clear that a state of war is not a

blank check for the President when it comes to the rights of the Nation's citizens." 542 U.S. 507, 536 (2004). And the Constitution certainly grants to Congress several powers in this area, including the powers: "[t]o declare War"; "[t]o raise and support Armies"; "[t]o provide and maintain a Navy"; "[t]o make Rules for the Government and Regulation of the land and naval Forces"; and "[t]o provide for calling forth the Militia to execute the Laws of the union, suppress Insurrections and repel Invasions." U.S. Const. art. I, § 8.

- (b) In a time of war, do you believe that the President has a "Commander-in-Chief" override to authorize violations of laws passed by Congress or to immunize violators from prosecution?**

Please see my response to question 6(a) above.

- (c) Is there any circumstance in which the President could ignore a statute passed by Congress and authorize torture or warrantless surveillance?**

Please see my response to question 6(a) above.

- 7. How should courts balance the President's expertise in national security matters with the judicial branch's constitutional duty to prevent abuse of power?**

The Supreme Court stated in *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, 177 (1803) that it is "the province and duty of the judicial department to say what the law is." If confirmed, I will faithfully apply all Supreme Court and Eleventh Circuit precedent in resolving any such issues.

- 8. Do you agree with Justice Scalia's characterization of the Voting Rights Act as a "perpetuation of racial entitlement?"**

I am not familiar with this characterization. If confirmed, I will faithfully apply Supreme Court and Eleventh Circuit precedent on the Voting Rights Act. *See, e.g., Oregon v. Mitchell*, 400 U.S. 112 (1970); *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

- 9. What does the Constitution say about what a President must do if he or she wishes to receive a foreign emolument?**

Article I, section 9, clause 8 states: "No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatsoever, from any King, Prince, or foreign State."

- 10. In *Shelby County v. Holder*, a narrow majority of the Supreme Court struck down a key provision of the Voting Rights Act. Soon after, several states rushed to exploit that decision by enacting laws making it harder for minorities to vote. The need for this law was revealed through 20 hearings, over 90 witnesses, and more than 15,000 pages of testimony in the House and Senate Judiciary Committees. We found that barriers to voting persist in our country. And yet, a divided Supreme Court disregarded Congress's findings in reaching its**

decision. As Justice Ginsburg's dissent in *Shelby County* noted, the record supporting the 2006 reauthorization was "extraordinary" and the Court erred "egregiously by overriding Congress' decision."

**(a) When is it appropriate for a court to substitute its own factual findings for those made by Congress or the lower courts?**

The parties develop the facts in the trial courts, which are accepted by the appellate courts unless those facts are clearly erroneous. Beyond that, as a judicial nominee, it is inappropriate to answer as my personal opinion as to the appropriateness such a circumstance in a hypothetical case. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C).

**11. How would you describe Congress's authority to enact laws to counteract racial discrimination under the Thirteenth, Fourteenth, and Fifteenth Amendments, which some scholars have described as our Nation's "Second Founding"?**

The Thirteenth, Fourteenth, and Fifteenth Amendments each provide that Congress has the power to enforce them, and thereby counteract racial discrimination, "by appropriate legislation." U.S. Const., art. XIII, §2; U.S. Const., art. XIV, §5; U.S. Const., art. XV, §2.

**12. Justice Kennedy spoke for the Supreme Court in *Lawrence v. Texas* when he wrote: "liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct," and that "in our tradition, the State is not omnipresent in the home."**

**(a) Do you believe the Constitution protects that personal autonomy as a fundamental right?**

In *Lawrence v. Texas*, 539 U.S. 558, 578 (2003), the Supreme Court held that the Texas statute at issue "furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual." If confirmed, I will fully and faithfully apply all Supreme Court and Eleventh Circuit precedent, including *Lawrence*.

**13. In the confirmation hearing for Justice Gorsuch, there was extensive discussion of the extent to which judges and Justices are bound to follow previous court decisions by the doctrine of stare decisis.**

**(a) In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court? Does the commitment vary depending on whether the question is one of statutory or constitutional interpretation?**

It is never appropriate for lower court judges to not follow binding precedent established by their higher courts. The Supreme Court has stated that “the doctrine of stare decisis is of fundamental importance to the rule of law.” *Hilton v. South Carolina Public Ry. Comm’n.*, 502 U.S. 197, 202 (1991) (citation omitted). If confirmed, I will follow all Supreme Court and Eleventh Circuit precedent.

14. Generally, federal judges have great discretion when possible conflicts of interest are raised to make their own decisions whether or not to sit on a case, so it is important that judicial nominees have a well-thought out view of when recusal is appropriate. Former Chief Justice Rehnquist made clear on many occasions that he understood that the standard for recusal was not subjective, but rather objective. It was whether there might be any appearance of impropriety.

**(a) How do you interpret the recusal standard for federal judges, and in what types of cases do you plan to recuse yourself? I’m interested in specific examples, not just a statement that you’ll follow applicable law.**

Consistent with my response to question 24.b. of the Senate Judiciary Questionnaire, having served as a state court judge since 2015, I expect to have few foreseeable conflicts with two foreseeable exceptions. If confirmed, it will be possible that a federal habeas case filed pursuant to 28 U.S.C. § 2254, will be assigned to me, where I had adjudicated the petitioner’s Florida state post-conviction appellate case. In such a situation, I would ensure the case is reassigned. Second, I would recuse from all cases involving clients I represented during my tenure at the Federal Public Defender’s Office. I would follow the procedure in the Middle District of Florida for reassignment of cases in which I recuse.

As for any Motions for Disqualification or cases where my impartiality may reasonably be questioned, I would carefully consider 28 U.S.C. §§ 144, 455, Canon 3 of the Code of Judicial Conduct for United States Judges, and any other laws, rules, or practices governing such circumstances.

15. It is important for me to try to determine for any judicial nominee whether he or she has a sufficient understanding of the role of the courts and their responsibility to protect the constitutional rights of all individuals. The Supreme Court defined the special role for the courts in stepping in where the political process fails to police itself in the famous footnote 4 in *United States v. Carolene Products*. In that footnote, the Supreme Court held that “legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation.”

**(b) Can you discuss the importance of the courts’ responsibility under the *Carolene Products* footnote to intervene to ensure that all citizens have**

**fair and effective representation and the consequences that would result if it failed to do so?**

Footnote four of *Carolene Products* states, “It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation.” *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938). Our country was founded on the principle of separation of powers for our three, co-equal branches of government. The judiciary branch plays an essential role in protecting constitutional rights through the fair and impartial application of the law to the facts of all cases and controversies. Having served as an attorney with the Federal Public Defender's Office for nearly decade and a state court judge for the past five years, I am intimately familiar with the importance of effective assistance of counsel in the administration of justice. If confirmed, I would fully and faithfully apply all Supreme Court and Eleventh Circuit precedent providing for these protections.

16. Both Congress and the courts must act as a check on abuses of power. Congressional oversight serves as a check on the Executive, in cases like Iran-Contra or warrantless spying on American citizens. It can also serve as a self-check on abuses of Congressional power. When Congress looks into ethical violations or corruption, including inquiring into the administration’s conflicts of interest and the events detailed in the Mueller report, we are fulfilling our constitutional role.

**(a) Do you agree that Congressional oversight is an important means for creating accountability in all branches of government?**

Yes.

17. **Do you believe there are any discernible limits on a president’s pardon power? Can a president pardon himself?**

As a judicial nominee, it is inappropriate for me to provide an answer as to my personal views on matters that are or may be the subject of pending or impending litigation. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

18. **What is your understanding of the scope of congressional power under Article I of the Constitution, in particular the Commerce Clause, and under Section 5 of the Fourteenth Amendment?**

Congress is conferred specifically enumerated powers by the U.S. Constitution. These powers include those under Article I, Section 8 of the Constitution, including the Commerce Clause, and under Section 5 of the Fourteenth Amendment. If confirmed, I will fully and faithfully apply Supreme Court and Eleventh Circuit precedent relating to the scope of congressional powers under the sections outlined above. *See, e.g., City of Boerne v. Flores*, 521 U.S. 507 (1997); *United States v. Lopez*, 514 U.S. 549 (1995); *Wickard v. Filburn*, 317 U.S. 11 (1942).

19. In *Trump v. Hawaii*, the Supreme Court allowed President Trump’s Muslim ban to go forward on the grounds that Proclamation No. 9645 was facially neutral and asserted that the ban was in the national interest. The Court chose to accept the findings of the Proclamation without question, despite significant evidence that the President’s reason for the ban was animus towards Muslims. Chief Justice Roberts’ opinion stated that “the Executive’s evaluation of the underlying facts is entitled to appropriate weight” on issues of foreign affairs and national security.

**(a) What do you believe is the “appropriate weight” that executive factual findings are entitled to on immigration issues? Is there any point at which evidence of unlawful pretext overrides a facially neutral justification of immigration policy?**

The decision in *Trump v. Hawaii* is binding Supreme Court precedent. There, the Court concluded that review into “the persuasiveness of the President’s justifications is inconsistent with the broad statutory text and the deference traditionally accorded the President in this sphere.” The Court further held that because the Proclamation in question was thoroughly descriptive in terms of “process, agency evaluations, and underlying the President’s chosen restrictions,” the plaintiff’s attacks on the sufficiency of the President’s findings could not be sustained. 138 S. Ct. 2392, 2409 (2018). If confirmed, I would fully and faithfully apply this and all other binding precedent.

20. **How would you describe the meaning and extent of the “undue burden” standard established by *Planned Parenthood v. Casey* for women seeking to have an abortion? I am interested in specific examples of what you believe would and would not be an undue burden on the ability to choose.**

In *Whole Women’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2309 (2016), the Supreme Court held that “unnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on that right.” This holding, along with *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), are binding Supreme Court precedent which I would fully and faithfully apply, if confirmed. As a judicial



nominee, it would be inappropriate for me to preview how I might rule in future cases, including cases calling for application of the “undue burden” standard to particular regulations. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

21. Federal courts have used the doctrine of qualified immunity in increasingly broad ways. For example, qualified immunity has been used to protect a social worker who strip searched a four-year-old, a police officer who went to the wrong house, without even a search warrant for the correct house, and killed the homeowner, and many other startling cases.

**(a) Has the “qualified” aspect of this doctrine ceased to have any practical meaning? Do you believe there can be rights without remedies?**

As a judicial nominee, it would be inappropriate for me to comment on questions that are the subject of pending or impending litigation, and that could come before me, if confirmed. Potential litigants must be assured that they will receive a fair and full hearing in my court based upon the facts of their individual case and the impartial application of all applicable law to those facts. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

22. The Supreme Court, in *Carpenter v. U.S.* (2018), ruled that the Fourth Amendment generally requires the government to get a warrant to obtain geolocation information through cell-site location information. The Court, in a 5-4 opinion written by Chief Justice Roberts, held that the third-party doctrine should not be applied to cellphone geolocation technology. The Court noted “seismic shifts in digital technology,” such as the “exhaustive chronicle of location information casually collected by wireless carriers today.”

**(a) In light of *Carpenter* do you believe that there comes a point at which collection of data about a person becomes so pervasive that a warrant would be required? Even if collection of one bit of the same data would not?**

If confirmed, I would fully and faithfully apply all Supreme Court and Eleventh Circuit precedent, including *Carpenter*. As a judicial nominee, it would be inappropriate for me to preview how I might rule in future cases. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

23. Earlier this year, President Trump declared a national emergency in order to redirect funding toward the proposed border wall after Congress appropriated less money than requested for that purpose. This raised serious separation-of-powers concerns because

Congress, with the power of the purse, rejected the President's request to provide funding for the wall.

- (a) With the understanding that you cannot comment on pending cases, are there situations in which you believe a president can lawfully allocate funds for a purpose previously rejected by Congress?**

As a judicial nominee, it is inappropriate for me to provide an answer as to my personal views on matters that may be the subject of pending or impending litigation. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

- 24. Can you discuss the importance of judges being free from political influence or the appearance thereof?**

The structure of our Constitution depends upon an independent judiciary. Judges protect this independence by acting within their role in our constitutional framework, which maintains the public's confidence in the integrity of the judiciary. Canon 1 of the Code of Conduct for United States Judges states that "[a]n independent and honorable judiciary is indispensable to justice in our society." To protect judicial independence, Article III provides that judges will serve for a period of good behavior and that judicial compensation will not be diminished during their continuation in office. If confirmed, I will fully and faithfully follow my judicial oath of office and the Judicial Code of Conduct for United States Judges. Furthermore, I will treat all cases and litigants before me with dignity and respect and adjudicate all cases by applying the applicable law without passion or prejudice.

**Senator Dick Durbin**  
**Written Questions for Badalamenti**  
**February 19, 2020**

For questions with subparts, please answer each subpart separately.

**Questions for John Badalamenti**

1. **When do you believe it is appropriate for the Supreme Court to overrule one of its precedents?**

This is a matter for the consideration and purview of the Supreme Court. All inferior courts are bound to fully and faithfully apply all Supreme Court precedent, unless and until the Court has overruled it. *See Hicks v. Miranda*, 422 U.S. 332, 344–45 (1975)

2. **Should district court judges ever write opinions—whether majority opinions, concurrences, or dissents—calling for the Supreme Court to review and consider reversing its own precedents? Or is improper for lower court judges to opine on what the Supreme Court should do?**

Unless sitting by designation on a court of appeals or on a specially constituted three-judge panel of the district court, district judges do not author concurring or dissenting opinions. A district judge is required to fully and faithfully apply all Supreme Court precedent, and any order or opinion must be written in a manner consistent with that duty.

3. In May 2019, *The Washington Post* reported that Federalist Society board co-chair Leonard Leo is at the center of millions of dollars in dark money donations that are being used to influence the selection of judicial nominations. The *Post* reported that Mr. Leo “defended the practice of taking money from donors whose identities are not publicly disclosed.” (<https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts/>)

In January 2020, Mr. Leo told *Axios* that he will be running a new venture that will involve a “minimum of \$10 million issue advocacy campaign focusing on judges in the 2020 cycle.” The article noted that Mr. Leo will remain co-chair of the Federalist Society’s board. (<https://www.axios.com/leonard-leo-crc-advisors-federalist-society-50d4d844-19a3-4eab-af2b-7b74f1617d1c.html>)

- a. **You are a member of the Federalist Society. Does it concern you to hear that Mr. Leo, who is the public face of the Federalist Society, is running a dark money funded political advocacy campaign focused on judges?**

I have no personal knowledge of Mr. Leo’s statements and cannot speak to them or any of Mr. Leo’s actions.

- b. Do you believe that wealthy individuals or special interests that make undisclosed donations to organizations that help choose judicial nominees should make their donations public so that judges can have full information when they make decisions about recusal in cases these donors may have an interest in?**

I have no personal knowledge that this has occurred and cannot speak to it.

4.

- a. Do you have any concerns about outside groups or special interests making undisclosed donations to front organizations like the Judicial Crisis Network in support of your nomination? Note that I am not asking whether you have solicited any such donations, I am asking whether you would find such donations to be problematic.**

I have no knowledge that this has occurred in connection with my nomination and cannot speak to it.

- b. If you learn of any such donations, will you commit to call for the undisclosed donors to make their donations public so that if you are confirmed you can have full information when you make decisions about recusal in cases that these donors may have an interest in?**

I have no knowledge that this has occurred in connection with my nomination. If I learned of any such donations, I would consider the appropriate responses in light of the recusal statute and the Code of Conduct for United States Judges.

- c. Will you condemn any attempt to make undisclosed donations to the Judicial Crisis Network on behalf of your nomination?**

Please see my responses to questions 4.a. and 4.b. above.

5.

- a. Do you believe that judges should be “originalist” and adhere to the original public meaning of constitutional provisions when applying those provisions today?**

It is my understanding that “originalism” refers to an individual’s approach to constitutional or statutory interpretation, where that person affords the words in a provision their plain and ordinary meaning as those words were understood by the public when the constitutional or statutory provision was passed. Although I do not prefer labels, I ascribe to this approach when embarking on discerning the meaning of a constitutional and statutory provision. If confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and the Eleventh Circuit, including precedent concerning constitutional and statutory interpretation.

- b. If so, do you believe that courts should adhere to the original public meaning of the Foreign Emoluments Clause when interpreting and applying the Clause**

**today?** To the extent you may be unfamiliar with the Foreign Emoluments Clause in Article I, Section 9, Clause 8, of the Constitution, please familiarize yourself with the Clause before answering. The Clause provides that:

...no Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or title, of any kind whatever, from any King, Prince, or foreign State.

As a judicial nominee, it is inappropriate for me to answer this question as it may involve pending or impending federal litigation and involves current political debate. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C). If confirmed, I will fully and faithfully apply all Supreme Court and the Eleventh Circuit precedent, including precedent concerning constitutional and statutory interpretation.

6.

**a. Do you interpret the Constitution to authorize a president to pardon himself?**

Please see my response to question 5.b.

**b. What answer does an originalist view of the Constitution provide to this question?**

Please see my response to question 5.b.

**Nomination of John L. Badalamenti  
to the United States District Court for the Middle District of Florida  
Questions for the Record  
Submitted February 19, 2020**

**QUESTIONS FROM SENATOR WHITEHOUSE**

1. Your questionnaire indicates that you have been a member of the Tampa Bay Chapter of the Federalist Society from 2012 until present.

- a. What was your primary motivation for joining the organization? Did you believe that being a member of the Federalist Society would improve your odds of being confirmed as a federal judge in the Trump administration?

At the time I joined the Federalist Society in 2012, I was serving as an Assistant Federal Public Defender, a Vice Chair of the Florida Bar's Federal Court Practice Committee, a member of the Federal Bar Association, and as a Barrister in Inns of Courts heavily focused on federal law, among other activities. The Tampa Bay Chapter of the Federalist Society provided no-cost continuing legal education programs that complemented my memberships in other law-related organizations. I did not join the Federalist Society to improve my odds of being confirmed as a federal judge in the Trump administration. I joined the Federalist Society approximately five years before President Trump assumed office.

- b. If confirmed, do you plan to remain an active participant in the Federalist Society?

If appropriate and consistent with the Code of Judicial Conduct, I plan to remain an active participant in the Federalist Society. I would not be an active participant in any organization where such participation is inconsistent with the ethical rules applicable to federal judges.

- c. If confirmed, do you plan to donate money to the Federalist Society?

No.

- d. Have you had contacts with representatives of the Federalist Society, in either their official or unofficial capacity, in preparation for your confirmation hearing? Please specify.

Not to my recollection.

2. A Washington Post report from May 21, 2019 (“A conservative activist’s behind-the-scenes campaign to remake the nation’s courts”) documented that Federalist Society



Executive Vice President Leonard Leo raised \$250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven't already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.

- a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

No, I am neither familiar with the Washington Post story nor the associated recordings of Mr. Leo. Even if I were familiar with those sources, as a judicial nominee, it would not be appropriate for me to comment on political matters relating to the confirmation of federal judges.

- b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

As a judicial nominee, it would not be appropriate for me to comment on political matters relating to the confirmation of federal judges.

- c. Mr. Leo was recorded as saying: "We're going to have to understand that judicial confirmations these days are more like political campaigns." Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

Please see my response to question 2.a. above.

- d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination? If you do, please describe the circumstances of that advocacy.

No.

- e. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we "stand at the threshold of an exciting moment" marked by a "newfound embrace of limited constitutional government in our country [that hasn't happened] since before the New Deal." Do you share the beliefs espoused by Mr. Leo in that recording?

Please see my response to question 2.a. above.

3. 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?

Yes, I agree with the Chief Justice's metaphor in that both an umpire and a judge should be impartial arbiters with no stake in the outcome. Just as umpires must impartially enforce the rules of baseball, judges must ensure that all parties follow the rules established by the court and the rules of procedure, follow all applicable statutes, rules, and binding precedent, and ensure the overall proceedings are fair to all.

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

A judge should consider the practical consequences when directed to do so by controlling law. *See, e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (noting that in the context of ruling on a motion for a preliminary injunction, a judge should consider practical consequences such as whether the plaintiff is likely to suffer irreparable harm in the absence of preliminary relief, among other considerations).

4. Federal Rule of Civil Procedure 56 provides that a court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact" in a case. Do you agree that determining whether there is a "genuine dispute as to any material fact" in a case requires a trial judge to make a subjective determination?

In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986), the Supreme Court held that "the 'genuine issue' summary judgment standard is 'very close' to the 'reasonable jury' directed verdict standard" and that "the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." I will fully and faithfully follow all Supreme Court and Eleventh Circuit precedent when ruling on motions for summary judgment.

5. 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?

Empathy is the ability to understand what another is feeling. It is important for a judge, to the best of his or her ability, to recognize what others have gone through in order to treat all people appearing in court with respect, whether they are the parties, counsel, victims, witnesses, or jurors. In final analysis, a judge's empathy can never supersede the judge's duty to follow the law.

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

Please see my response to question 5.a. above.

6. 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.

7. The Seventh Amendment ensures the right to a jury “in suits at common law.”  
a. What role does the jury play in our constitutional system?

The Seventh Amendment states that “the right of trial by jury shall be preserved” and provides this fundamental guarantee to the people. Juries play a critical role in our constitutional system.

- b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

I have not encountered or studied this issue. If confirmed and a matter such as this were presented to me, I would fully and faithfully follow Supreme Court and Eleventh Circuit precedent to resolve the issue for the litigants.

- c. Should an individual’s Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

Please see my response to question 7.b. above.

8. What deference do congressional fact-findings merit when they support legislation expanding or limiting individual rights?

The Supreme Court decided several cases analyzing the level of deference that should be given to fact-findings by Congress in situations where they support expanding or limiting individual rights. *See, e.g., City of Boerne v. Flores*, 521 U.S. 507 (1997). If confirmed, I will fully and faithfully follow all binding precedent, including on this issue.

9. The Federal Judiciary’s Committee on the Codes of Conduct recently issued “Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates.” I request that before you complete these questions you review that Advisory Opinion.  
a. Have you read Advisory Opinion #116?

Yes.

b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?

i. Determining whether the seminar or conference specifically targets judges or judicial employees.

Before participating in any educational seminars, I will ensure that my participation abides by the Code of Conduct for United States Judges, and I will consider Advisory Opinion # 116, along with any subsequent advisory opinions from the Committee of Codes of Conduct relating to participation in any educational seminars.

ii. Determining whether the seminar is supported by private or otherwise anonymous sources.

Please see my response to question 9.b.i. above.

iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.

Please see my response to question 9.b.i. above.

iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.

Please see my response to question 9.b.i. above.

v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

Please see my response to question 9.b.i. above.

c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

Please see my response to question 9.b.i. above.

**Nomination of John Leonard Badalamenti, to be United States District Court Judge  
for the Middle District of Florida  
Questions for the Record  
Submitted February 19, 2020**

**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?

See my responses to questions 1.a., 1.b., 1.c., 1.d., 1.e., and 1.f. below.

- 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. The Supreme Court has relied on treatises, common law sources, state constitutions, among other sources. I will fully and faithfully apply all applicable Supreme Court and Eleventh Circuit precedent.

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

If the right had been previously recognized by the Supreme Court or the Eleventh Circuit, then I would be bound by that precedent. If there were not binding precedent, I would consider out-of-circuit precedent.

- d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right has been recognized by any court of appeals?

Yes, as to both questions.

- 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*).

Yes.

- f. What other factors would you consider?

I will fully and faithfully apply all Supreme Court and Eleventh Circuit precedent. See, e.g., *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Loving v. Virginia*, 388 U.S. 1 (1967); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925).

2. Does the Fourteenth Amendment’s promise of “equal protection” guarantee equality across race and gender, or does it only require racial equality?

The Supreme Court has held that the Fourteenth Amendment generally protects individuals from government discrimination on the basis of both race and sex. See *United States v. Virginia*, 518 U.S. 515 (1996).

- 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?

Please see my response to question 2 above.

- 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 am not familiar with this contention. However, the Supreme Court itself has noted that the Court’s enforcement of constitutionally guaranteed rights and limitations on government power often has occurred well after ratification of the relevant constitutional provision. See *District of Columbia v. Heller*, 554 U.S. 570, 625–26 (2008) (“This Court first held a law to violate the First Amendment’s guarantee of freedom of speech in 1931, almost 150 years after the Amendment was ratified . . . and it was not until after World War II that we held a law invalid under the Establishment Clause . . .”). Regardless, if confirmed, I would fully and faithfully follow *United States v. Virginia* and all Supreme Court and Eleventh Circuit precedent.

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

The Supreme Court held in *Obergefell v. Hodges*, 135 S. Ct. 2584, 2605 (2015) that the Fourteenth Amendment requires same-sex couples to be afforded the right to marry “on the same terms accorded to couples of the opposite sex.”

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



It is my understanding that this issue is presently being litigated. As a judicial nominee, it would therefore be inappropriate for me to comment on that question. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

The Supreme Court has held that there is. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972). If confirmed, I would fully and faithfully apply that and all other binding precedent.

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

The Supreme Court has held that there is. *See, e.g., Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992); and *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016). If confirmed, I would fully and faithfully apply that and all other 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?

The Supreme Court has held that there is. *See Lawrence v. Texas*, 539 U.S. 558 (2003). If confirmed, I would fully and faithfully apply that and all other 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.

Please see my responses to question 3, 3.a., and 3.b 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?

The Supreme Court has held that societal changes can be relevant to a court’s analysis in numerous contexts. When the Supreme Court has directed lower courts “to consider

evidence that sheds light on our changing understanding of society,” the lower courts should do so. If confirmed, I will follow the Supreme Court’s precedent on this issue, including *Virginia* and *Obergefell*, and all other Supreme Court and Eleventh Circuit precedent.

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

The Supreme Court has generally indicated that district judges act in a “gatekeeping role” for this type of evidence when considering a relevant fact under Federal Rule of Evidence 702. See *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993). And scientific evidence presented in the form of expert opinions is an important part of many trials. The role of the evidence varies depending on how it is used and the nature of the legal and factual disputes at issue. In the final analysis, I will fully and faithfully follow all applicable Federal Rules of Procedure, statutes, and Supreme Court and Eleventh Circuit precedent in these instances.

5. In the Supreme Court’s *Obergefell* opinion, Justice Kennedy explained, “If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians.”

- a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

The Supreme Court has squarely held that same-sex couples have a right of privacy, *Lawrence v. Texas*, 539 U.S. 558 (2003), and a right to marry, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). The Supreme Court has further instructed that “[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth,” *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Commission*, 138 S. Ct. 1719, 1727 (2018). I would follow this and all other binding precedent.

- b. When is it appropriate to apply Justice Kennedy’s formulation of substantive due process?

I would follow all binding precedent in cases raising issues of substantive due process. When a Supreme Court precedent—whether related to substantive due process or any other matter—controls the outcome of a case that is pending before me, I would faithfully apply it.

6. You are a member of the Federalist Society, a group whose members often advocate an “originalist” interpretation of the Constitution.

- a. 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. 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 studied this issue. I will fully and faithfully follow *Brown v. Board of Education*, and all Supreme Court and Eleventh Circuit precedent, regardless of the analytical framework the Court employed in deciding the case.

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ or ‘equal protection,’ or ‘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 Feb. 20, 2020).

I have not studied this issue. If confirmed, I will fully and faithfully follow all Supreme Court and Eleventh Circuit precedent, regardless of the analytical framework the Court employed in deciding the case.

- 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?

The Supreme Court has recognized the importance of the Constitution’s text, structure, and original public meaning in interpreting a constitutional provision. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I will fully and faithfully follow all Supreme Court and Eleventh Circuit precedent, regardless of the analytical framework the Court employed in deciding the case.

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

Please see my response to question 6.c. above.

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

Please see my response to question 6.c. above.

**Questions for John L. Badalamenti  
From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee to ensure the fitness of nominees for a lifetime appointment to the federal bench, I ask each nominee to answer the following two questions:

**a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

No.

**b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

No.

2. Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases.

**a. Do you agree that training on implicit bias is important for judges to have?**

Yes.

**b. Have you ever taken such training?**

Yes.

**c. If confirmed, do you commit to taking training on implicit bias?**

If confirmed, I commit that I will inquire with my Chief Judge and the Administrative of Courts as to the offerings of trainings for judges and judicial employees.

3. You wrote the panel opinion in *Jefferson v. State*, giving prosecutors the burden of overcoming a defendant's "Stand Your Ground" claim of self-defense immunity. In that opinion, you recognized there would be situations where the defendant is the only available witness to events and that "this may result in great difficulty for the State to overcome the accused's prima facie claim by clear and convincing evidence."

**a. What impacts to prosecutors did you foresee as a result of this decision?**

In *Jefferson v. State*, 264 So. 3d 1019 (Fla. 2d DCA 2018), a unanimous panel of our court interpreted the plain and unambiguous text of Florida Statute § 776.032(4), which,

we held, reflected the legislature's decision to shift the burden to the State to overcome an accused's assertion of self-defense immunity by clear and convincing evidence. *Id.* at 1028–29. In noting that the text of the statute passed by the legislature "may result in great difficulty for the State to overcome the accused's prima facie claim by clear and convincing evidence," our court was acknowledging the practical and financial concerns raised by the trial court below. *Id.* at 1028–29. Our court noted, "Although we both recognize and appreciate the legitimate concerns raised by the trial court, its interpretation contravenes the text of section 776.032(4). The practical and financial impact on both the executive and judicial branches are concerns for the legislature, not the courts." *Id.* at 1028. Our court explained that our court's role was limited to interpreting the plain and unambiguous text of the statute and, if our interpretation was not what the legislature intended, the legislature could later clarify its intent by amending the statute. *Id.* at 1029–30. Our court then concluded, "Unless and until that occurs, courts are duty bound to carry out the legislative intent by mandating that the State bear the evidentiary burden . . . ." *Id.* at 1030.

**b. Would you agree that by shifting the burden of proof to prosecutors, it becomes easier to claim immunity, potentially emboldening defendants? Why or why not?**

As a current state court judge with this subject matter pending in Florida state courts, it would be inappropriate for me to comment on the potential impact of the statute, beyond what I have already written in my judicial opinions.

4. You concurred in *Bailey v. State* to uphold a fifty-year prison sentence for a juvenile convicted of first-degree murder. Originally mandatory life in prison, the new sentence was found to comply with *Miller v. Alabama*.

**To what extent do you believe juveniles should be treated differently than adults convicted of similar crimes?**

In *Bailey v. State*, 277 So. 3d 173 (Fla. 2d DCA 2019), a unanimous panel of our court held that the resentencing of an individual convicted of first-degree murder while that individual was a juvenile to a fifty-year sentence with a review after twenty-five years complied with the juvenile sentencing procedures set forth in the Florida juvenile sentencing statutes passed in response to the Supreme Court's decision in *Miller v. Alabama*, 567 U.S. 460 (2019). *Id.* at 178. As a current state court judge and judicial nominee, it would be inappropriate for me to comment on sentencing policy decisions set forth by a legislative body and on issues that may be the subject of pending or impending litigation. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C). If confirmed, I will fully and faithfully apply all statutes, and all applicable precedent from Supreme Court and Eleventh Circuit.

5. In 2002, you co-authored an article that examined the legislative history of the Securities Litigation Uniform Standards Act in order to determine Congress' intent in passing the statute. The article concluded that, "we must be mindful that, in construing a statute, the context in which statutory language is used and the intent of the statute are critically important."

**Can you explain in detail how you would determine congressional intent and what role it would play in your consideration of a case?**

The Supreme Court has stated that statutory interpretation begins and ends with the text if the text is unambiguous. *See, e.g. Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). But if the statute is ambiguous, the Supreme Court has explained that legislative history, if clear, may be used to assist in determining the meaning of that ambiguous statute. *See id.* at 254; *cf. Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 567-71 (2005). If confirmed, I will fully and faithfully apply all Supreme Court and the Eleventh Circuit precedent, including precedent concerning statutory interpretation.

**Nomination of John Leonard Badalamenti**  
**United States District Court for the Middle District of Florida**  
**Questions for the Record**  
**Submitted February 19, 2020**

**QUESTIONS FROM SENATOR BOOKER**

1. You served as a project assistant and were listed as a coauthor for a new edition of the *Private Adult Correctional Facility Census*, which was published in 1997 by the University of Florida's Center for Studies in Criminology Law.<sup>1</sup> The preface of the report, which is attributed to your coauthor Charles W. Thomas, stated that the report was formally "not intended either to advocate or to oppose correctional privatization."<sup>2</sup> But it then addressed "[p]rivatization opponents" as "at least partly wrong," because, "first, more than a decade of experience with correctional privatization has proven their legal position to be devoid of merit or recognition by the courts and, second, that the moral authority they attribute to their preferred policy choice is unpersuasive to anyone who is more concerned with the quality of correctional services than with the public or private identity service providers [sic]."<sup>3</sup> It went on to conclude that "[t]he volume of concrete evidence is now large enough and positive enough that policy makers have an obligation to consider privatization as a potentially valuable innovation."<sup>4</sup>

I believe that attaching a profit motive to imprisonment undermines the cause of justice and fairness. Moreover, the Inspector General for the U.S. Department of Justice has found that privately managed prisons housing federal inmates are less safe and less secure than federal prisons, and that these facilities have seen repeated instances of civil rights violations.<sup>5</sup>

- a. Based on your work on this issue at the time, did you agree with the openness expressed in the report's preface to using privately operated prisons?

As the question properly notes, that statement was attributed to the coauthor of this publication and Director of the Private Corrections Project, Dr. Charles W. Thomas, Ph.D. In *Richardson v. McKnight*, 521 U.S. 399 (1997), writing for the Court, Justice Breyer explained as follows: "Our research, including the sources that the parties have cited, reveals that in the 19th century (and earlier) sometimes private contractors and sometimes government itself carried on prison management activities." *Id.* at 407. The Florida Legislature, for example, has determined that correctional services may be contracted to private vendors. *See* Fla. Stat. §§ 957.01-.16 (2019). Whether or not to utilize private correctional services remains a highly debated, politically charged issue in Florida, and is the subject of litigation throughout Florida. As a current state court judge and judicial nominee, it would be inappropriate for me to comment on any political issues and any issues that may be the subject of pending or impending litigation. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C).

- b. Did anything in your experience working in the Federal Public Defender's Office lead you to question the propriety of using privately operated prisons?

As a judicial nominee, it would be inappropriate for me to provide opinions on any political matters, such as the legislative or executive branches' respective decisions whether or not to utilize private correctional services. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C).

- c. Has anything in your experience as a state court judge led you to question the propriety of using privately operated prisons?

Please see my response to question 1.b. above.

- d. Please familiarize yourself, if you have not done so already, with the Justice Department Inspector General's report referenced above. How do the findings of the Inspector General's report affect your views on the propriety of using privately operated prisons?

Please see my response to question 1.b. above.

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<sup>1</sup> Charles W. Thomas, Dianne Bolinger & John L. Badalamenti, Ctr. for Studies in Criminology & Law, Univ. of Fla., *Private Adult Correctional Facility Census* (10th ed. 1997), in SJQ Attachments to Question 12(a), at 13.

<sup>2</sup> *Id.* at i, in SJQ Attachments to Question 12(a), at 15.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at xii, in SJQ Attachments to Question 12(a), at 26.

<sup>5</sup> OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE, REVIEW OF THE FEDERAL BUREAU OF PRISONS' MONITORING OF CONTRACT PRISONS (Aug. 2016), <https://oig.justice.gov/reports/2016/e1606.pdf>.



2. You spent nine years working in the Federal Public Defender's Office for the Middle District of Florida, first as a Research and Writing Specialist (2006-2008) and then as an Assistant Public Defender (2008-2015).<sup>6</sup>

- a. What was the most challenging experience you had in criminal defense matter during your time there?

During my tenure at the Federal Public Defender's Office, our office was appointed to represent hundreds, if not thousands, of indigent criminal defendants. It is difficult for me to isolate any one challenging experience I had in a criminal defense matter. Every case I handled had its own challenges, as each involved specific criminal charges filed against a unique individual with his or her own personal and surrounding circumstances.

- b. How have your criminal defense experiences informed your work as a state court judge since 2015?

As noted in my response to question 13(a) of my Judiciary Questionnaire, my docket as a Florida state appellate judge has been approximately 70% criminal or postconviction/habeas corpus proceedings. Prior to my appointment to the Florida appellate bench, my breath of criminal law experience was derived from my work as a criminal defense practitioner, as a federal law clerk, and my undergraduate and graduate studies in criminology and law and related topics. These experiences have all been helpful in executing the duties of a state court judge.

- c. If you are confirmed, how will your criminal defense experiences inform your work as a federal district judge?

I believe that my criminal defense experiences would equip me to manage the heavy criminal caseload that I would handle if I were confirmed.

3. You have been a member of the Federalist Society since 2012.<sup>7</sup> Why did you join the Federalist Society at that time?

At the time of becoming a member of the Federalist Society, I was serving as: an Assistant Federal Public Defender, Vice Chair of the Florida Bar's Federal Court Practice Committee, a member of the Federal Bar Association, and a member of the Inns of Courts. The Tampa Bay Chapter of the Federalist Society provided no-cost continuing legal education programs that complemented the subject matter of my existing employment and activities in other law-related organizations.

4. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

It is my understanding that originalism refers to the theory of constitutional interpretation where there is an identifiable original meaning, contemporaneous with the passage of the constitutional provision that then guides future interpretation. Please also see my response to question 5 below.

5. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

It is my understanding that textualism refers to an approach to constitutional or statutory interpretation, where the words in a provision are given their plain and ordinary meaning as that meaning was understood by the public when the constitutional or statutory provision was passed. Although I do not prefer labels, I follow a textualist approach to constitutional and statutory interpretation. If confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and the Eleventh Circuit, including precedent concerning constitutional and statutory interpretation.

6. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress's intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.
- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

The Supreme Court has stated that statutory interpretation begins and ends with the text if the text is unambiguous. *See, e.g., Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). If confirmed, I will consider legislative history in construing a statute when the Supreme Court or Eleventh Circuit precedent instructs it is permissible to do so. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 567–71 (2005). If confirmed, I will fully and faithfully apply all Supreme Court and the Eleventh Circuit precedent, including precedent concerning the consultation and citation of legislative history.

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn't it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

Please see my response to question 6.a. above.

7. Do you believe that judicial restraint is an important value for a district judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

Yes. It is my understanding that judicial restraint refers to the judicial principle that Congress enacts the laws and the judiciary defers to Congress as to its wisdom in passing those laws. It is not for the judiciary to say what the law should be based on the judge's personal beliefs or based upon the result a judge may desire in a particular case. The judge must follow the law. And the Supreme Court has stated that "[i]t is a fundamental rule of judicial restraint, however, that this Court will not reach constitutional questions in advance of the necessity of deciding them." *See Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g, P.C.*, 467 U.S. 138, 157 (1984).

- a. The Supreme Court’s decision in *District of Columbia v. Heller* dramatically changed the Court’s longstanding interpretation of the Second Amendment.<sup>8</sup> Was that decision guided by the principle of judicial restraint?

In *Heller*, the Court stated that it was resolving an issue previously unresolved by the courts as follows: “We conclude that nothing in our precedents forecloses our adoption of the original understanding of the Second Amendment. It should be unsurprising that such a significant matter has been for so long judicially unresolved. For most of our history, the Bill of Rights was not thought applicable to the States, and the Federal Government did not significantly regulate the possession of firearms by law-abiding citizens.” *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008). As a judicial nominee, it would be inappropriate for me to opine on the correctness of Supreme Court decisions. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C). If confirmed, I would faithfully apply *Heller* and all other binding precedent.

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<sup>6</sup> SJQ at 2.

<sup>7</sup> SJQ at 5.

<sup>8</sup> 554 U.S. 570 (2008).

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>9</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it would be inappropriate for me to opine on the correctness of Supreme Court decisions. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C). If confirmed, I would faithfully apply *Citizens United v. FEC* and all other binding precedent.

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>10</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it would be inappropriate for me to opine on the correctness of Supreme Court decisions. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C). If confirmed, I would faithfully apply *Shelby County v. Holder* and all other binding precedent.

8. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.<sup>11</sup> In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.<sup>12</sup>

- a. Do you believe that in-person voter fraud is a widespread problem in American elections?

Although I have not studied this issue, it is my understanding that there is currently pending litigation in several courts that may implicate this issue. Therefore, as a judicial nominee, it would be inappropriate for me to comment on this issue. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C).

- b. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

Please see my response to question 8.a. above.

- c. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

Please see my response to question 8.a. above.

9. According to a Brookings Institution 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.<sup>13</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>14</sup> 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.<sup>15</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>16</sup>

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

Yes.

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

Yes.

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<sup>9</sup> 558 U.S. 310 (2010).

<sup>10</sup> 570 U.S. 529 (2013).

<sup>11</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>12</sup> *Id.*

<sup>13</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

<sup>14</sup> *Id.*

<sup>15</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>16</sup> *Id.*

- 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.

I have not studied in depth the issue of implicit racial bias. I have attended a continuing legal education program on the topic of implicit racial bias and am generally familiar with the issue.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.<sup>17</sup> Why do you think that is the case?

I have not studied this issue in depth. As such, I do not have an informed basis to opine as to why this might be occurring. My graduate studies suggest there are myriad variables leading to this statistical disparity. Any disparity in sentencing is concerning. *See* 18 U.S.C. § 3553(a)(6) (noting that in fashioning a sentence, a district court shall consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct”). I look forward to the Sentencing Commission’s continued work on this topic.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.<sup>18</sup> Why do you think that is the case?

Please see my response to question 9.d.

- f. What role do you think federal judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

Congress has directed that district courts shall consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” in imposing a sentence. *See* 18 U.S.C. § 3553(a)(6). If confirmed, I will fully and faithfully apply all sentencing statutes and applicable Supreme Court and Eleventh Circuit law in imposing “a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing as compelled by the facts and circumstances of each individual criminal defendant. *Id.* § 3553(a).

10. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>19</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>20</sup>

- a. Do you believe there is a direct link between increases in 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 this issue in depth. As such, I do not have an informed basis to opine as to any causal relationship between incarceration and crime rates cited in that study.

- b. Do you believe there is a direct link between decreases in 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.

See my response to question 10.a. above.

11. 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.

12. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

Yes.

13. Do you believe that *Brown v. Board of Education*<sup>21</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Yes, *Brown v. Board of Education* was correctly decided. Although it is generally inappropriate for me, as a nominee, to comment on the correctness of a Supreme Court decision, *Brown* is unique as a landmark and unanimous Supreme Court decision that addressed a horrible stain on our Constitution and the terrible wrong in our country's history created by the *Plessy v. Ferguson* decision — that is, the false doctrine of separate but equal.

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<sup>17</sup> U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

<sup>18</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

<sup>19</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

<sup>20</sup> *Id.*

<sup>21</sup> 347 U.S. 483 (1954).

14. Do you believe that *Plessy v. Ferguson*<sup>22</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No, *Plessy v. Ferguson* was a terrible wrong in our country's history. In *Brown v. Board of Education*, the Supreme Court correctly ruled in a unanimous decision that *Plessy* was not correctly decided. Please see also my response to question 13 above.

15. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

No. My answers are my own and in conformity with the manner in which Justices Kagan and Ginsburg suggested these questions be answered at their respective confirmation hearings.

16. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had "an absolute conflict" in presiding over civil fraud lawsuits against Trump University because he was "of Mexican heritage."<sup>23</sup> Do you agree with President Trump's view that a judge's race or ethnicity can be a basis for recusal or disqualification?

Federal judges must determine whether recusal or disqualification is appropriate in a given case in accordance with 28 U.S.C. §§ 144 and 455. If confirmed, I would also carefully consult the Code of Conduct for Federal Judges. If confirmed, I would dutifully evaluate matters of recusal and disqualification.

17. President Trump has stated on Twitter: "We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came."<sup>24</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

In *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), the Supreme Court held that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, temporary, or permanent." If confirmed, I will fully and faithfully apply all binding precedent, including *Zadvydas*.



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<sup>22</sup> 163 U.S. 537 (1896).

<sup>23</sup> Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict,'* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

<sup>24</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

**Questions for the Record from Senator Kamala D. Harris**  
**Submitted February 19, 2020**  
**For the Nomination of:**

**John L. Badalamenti, to be United States District Judge for the Middle District of Florida**

1. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

- a. **What is the process you would follow before you sentenced a defendant?**

18 U.S.C. § 3553 lists seven factors to be considered in determining an appropriate sentence. I would ensure the applicable advisory Sentencing Guidelines range is correctly calculated. I would consider the specific facts and circumstances of the case, review all applicable statutes, and the presentence report. I would furthermore consider any testimony or statements from victims, witnesses, and the defendant's family, friends, employers, and the like. I would afford the defendant his right to allocute and carefully consider any allocution. I would review any sentencing memoranda filed by counsel and hear any arguments from counsel.

After reviewing all this information and carefully considering the seven factors arrayed in section 3553(a)(1)–(7), I would then impose a sentence, recognizing Congress's mandate that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes" designated by Congress for sentencing, including "the need for the sentence imposed; to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a).

- b. **As a new judge, how would you plan to determine what constitutes a fair and proportional sentence?**

I would follow the steps outlined in my response to Question 1(a). I would also bring my experience in actively participating in sentencing hearings, or evaluating sentencing proceedings for possible appeal to the Eleventh Circuit, during my service with the Federal Public Defender's Office. In addition, I would avail myself to the Sentencing Commission's ongoing collection of sentencing data.

- c. **When is it appropriate to depart from the Sentencing Guidelines?**

If confirmed, I will fully and faithfully apply all Supreme Court and Eleventh Circuit precedent to discern when it is appropriate to depart from the advisory Sentencing Guidelines.

- d. Judge Danny Reeves of the Eastern District of Kentucky—who also serves on the U.S. Sentencing Commission—has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.<sup>1</sup>

i. **Do you agree with Judge Reeves?**

I have not studied this issue. If confirmed, I would apply such sentencing laws as enacted by Congress regardless of my personal policy views. As a judicial nominee, it would be inappropriate for me to comment on whether I agree with Congress's decisions to create or remove mandatory minimum sentences. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C).

ii. **Do you believe that mandatory minimum sentences have provided for a more equitable criminal justice system?**

Please see my response to question 1.d.i. above.

iii. **Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.**

Please see my response to question 1.d.i. above.

- iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.<sup>2</sup> **If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

1. **Describing the injustice in your opinions?**

If confirmed, I would state all the reasoning for any sentence on the record, including those for which the sentencing court lacks discretion. In all circumstances, however, I would fully and faithfully apply the sentencing statutes and Supreme

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<sup>1</sup> <https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf>.

<sup>2</sup> *See, e.g.*, “Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose,” NY Times, July 28, 2014, <https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>.

Court and Eleventh Circuit precedent, putting aside my personal views.

2. **Reaching out to the U.S. Attorney and other federal prosecutors to discuss their charging policies?**

It is within the province of the Executive Branch to make charging decisions.

3. **Reaching out to the U.S. Attorney and other federal prosecutors to discuss considerations of clemency?**

Although the clemency power is reserved to the Executive Branch, I believe a judge may, in an appropriate case, state on the record that he or she would not have imposed a certain sentence but for the statute requiring him or her to do so. This would allow Executive Branch officials, should they decide to do so, to consider the impact of the mandatory minimum sentence in that particular case for the purpose of considering clemency.

- e. 28 U.S.C. Section 994(j) directs that alternatives to incarceration are “generally appropriate for first offenders not convicted of a violent or otherwise serious offense.” **If confirmed as a judge, would you commit to taking into account alternatives to incarceration?**

Yes. I will consider all alternatives to incarceration within the parameters established by the applicable sentencing statutes.

2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

a. **Does a judge have a role in ensuring that our justice system is a fair and equitable one?**

Yes.

b. **Do you believe there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

Yes. For many years, as indicated in my Senate Questionnaire, I taught continuing education programs on many areas of the Federal Bureau of Prisons. One point I covered was the racial composition of those serving federal sentences in federal correctional facilities. For example, the population of African Americans in federal correctional facilities is approximately 37%, which is approximately three to four times the proportion of African Americans in the United States population. This yields the

supportable conclusion that federal prosecutions, convictions, and resulting incarceration sentences disproportionately impact African Americans in our country. If confirmed, I will do everything in the authority conferred to sentencing courts by the sentencing statutes to guard against racial disparities in cases that come before me. I commit that all persons who come into my courtroom will be treated fairly, respectfully, and equally.

3. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

a. **Do you believe it is important to have a diverse staff and law clerks?**

Yes.

b. **Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?**

Yes.

**Senator Josh Hawley**  
**Questions for the Record**

**John Leonard Badalamenti**  
**Nominee, U.S. District Court for the Middle District of Florida**

- 1. What role should the original public meaning of the Constitution’s text play in federal courts’ interpretations of its provisions?**

It is my understanding that “original public meaning” refers to an approach to constitutional or statutory interpretation, where the words in a provision are given their plain and ordinary meaning as that meaning was understood by the public when the constitutional or statutory provision was passed. Although I do not prefer labels, I follow a textualist approach to constitutional and statutory interpretation. If confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and the Eleventh Circuit, including precedent concerning constitutional and statutory interpretation.

- 2. As a judge, how would you approach a case involving an issue of first impression?**

If confirmed, I would approach an issue of first impression by carefully analyzing the facts of the case before me, the legal issues raised by the parties, applicable statutes and legal authority, analogous case precedents, and exercise judicial restraint in fashioning an opinion for the litigants in an expeditious manner in order to provide a resolution to the parties.

- 3. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?**

As a judicial nominee, it is inappropriate for me to opine on the correctness of Supreme Court decisions. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C). If confirmed, I will apply all Supreme Court and Eleventh Circuit precedent.