

**Nomination of Thomas Barber to the U.S. District Court for the Middle District of
Florida Questions for the Record
Submitted October 24, 2018**

QUESTIONS FROM SENATOR FEINSTEIN

1. Please respond with your views on the proper application of precedent by judges.
- a. **When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?**

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

- 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?**

In some cases, when explaining a ruling, it may be helpful and proper for a trial court to respectfully note ambiguities, inconsistencies and disagreements with applicable law, but a district court must always follow the applicable law.

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

The United States Supreme Court determines when it is appropriate to overturn its own precedent. It has recently explained its considerations when determining to overrule a prior precedent in *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018) and *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

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 textbook 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 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”? “superprecedent”?**

Yes. However, regardless of any characterization as “super-stare decisis” or “superprecedent,” *Roe* is a Supreme Court precedent that is binding on all lower federal courts. If confirmed as a district court judge, I would apply it fully, faithfully, and objectively.

b. Is it settled law?

Yes. *Roe* is binding Supreme Court precedent. If confirmed as a district court judge, I would be bound by this decision, and would apply it fully, faithfully, and objectively.

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. *Obergefell* is binding Supreme Court precedent. If confirmed as a district court judge, I would be bound by this decision, and would apply it fully, faithfully, and objectively.

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 is not appropriate for me, as a district court judicial nominee, to comment on my opinion of Justice Stevens' dissent. *Heller*, like all other decisions of the United States Supreme Court, is binding precedent. If confirmed as a district court judge, I would be bound by this decision and would apply it fully, faithfully, and objectively.

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

Pursuant to Canons 2, 3(a) and 5 of the Code of Conduct for United States Judges, it would not be appropriate for me, as a district court judicial nominee, to comment on potential issues that could come before me as a district court judge. However, it should be noted that the *Heller* opinion itself states 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." *District of Columbia v. Heller*, 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* concluded that the Court was resolving a previously unresolved issue. *See Heller*, 554 U.S. at 625 ("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.”). As a district court judge, I would be bound by the United States Supreme Court’s understanding of its own precedents.

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?**

The United States Supreme Court has recognized that “First Amendment protections extend to corporations.” See *Citizens United v. Fed. Election Com’n*, 558 U.S. 310, 342 (2010) (collecting cases). However, pursuant to Canons 2, 3(a) and 5 of the Code of Conduct for United States Judges, it would not be appropriate for me, as a district court judicial nominee, to further comment on potential issues that could come before me as a district court judge.

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

Pursuant to Canons 2, 3(a) and 5 of the Code of Conduct for United States Judges, it would not be appropriate for me, as a district court judicial nominee, to comment on potential issues that could come before me as a district court judge.

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

Pursuant to Canons 2, 3(a) and 5 of the Code of Conduct for United States Judges, it would not be appropriate for me, as a district court judicial nominee, to comment on potential issues that could come before me as a district court judge.

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

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

I have spoken to many people over the past year that I have been involved in this process and I do not recall each and every conversation. To the best of my recollection I have not been asked by anyone in the Administration about my views on administrative law.

- 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?**

I have spoken to many people over the past year that I have been involved in this process and I do not recall each and every conversation. To the best of my recollection no person, group or organization has ever asked me about my views on administrative law.

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

I am generally aware of the issues surrounding the Supreme Court’s decision in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Although I have been a lawyer for 26 years, and a state court judge for nearly 14 years, I have little personal experience with administrative law and have no established views on the subject.

7. On your Senate Questionnaire, you indicate that you have been a member of the Federalist Society since 1988. 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 write this description and I do not personally know what the Federalist Society means by this statement. I have chosen to be a member of the Federalist Society because of its steadfast support for the ideal expressed in Federalist 78 that judges should decide cases based on the facts and the law, without regard to their own personal opinions or policy preferences.

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

I did not write this statement and I do not personally know what the Federalist Society means by this statement, and I am additionally unaware of any actions the Federalist Society has undertaken to reorder priorities in the legal system. As previously noted, I have chosen to be a member of the Federalist Society because of its steadfast support for the ideal expressed in Federalist 78 that judges should decide cases based on the facts and the law, without regard to their own personal opinions or policy preferences.

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

I did not write this statement and I do not personally know what the Federalist Society means by this statement. As previously noted, I have chosen to be a member of the Federalist Society because of its steadfast support for the ideal expressed in Federalist 78 that judges should decide cases based on the facts and the law, without regard to their own personal opinions or policy preferences.

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

Case law from the United States Supreme Court and the Eleventh Circuit provides guidance for district courts when construing statutes. As a district court judge, I would follow the precedents of the higher courts on the question of legislative history. In my experience as a judge, I have found legislative history to often be inconclusive, at best. However, in those rare instances when legislative history may appear to provide helpful guidance in construing a statute, it must be evaluated with great caution to ensure that the history represents the views of the entire body, as opposed to a few individual members of the legislature.

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

No. I have never had discussions with anyone about loyalty to President Trump.

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

I received Questions for the Record from five Senators, which were transmitted to me by the Department of Justice via e-mail on October 24, 2018. After carefully reviewing the questions, I drafted my responses. I solicited, and received, input from the Department of Justice, and made edits as I deemed appropriate. However, the answers I have provided to each question are my own.

**Nomination of Thomas P. Barber to be
United States District Judge for the Middle District of Florida
Questions for the Record
October 24, 2018**

QUESTIONS FROM SENATOR BLUMENTHAL

I am concerned about public faith in the judiciary's impartiality and integrity. Please address the following question in light of our nation's constitution, laws, and code of conduct for the judiciary.

- 1. Do you believe that a sitting judge or justice who is shown to have committed perjury or substantially misled the Senate Judiciary Committee about the truth of a matter should continue to serve on the bench?**

The Constitution entrusts to Congress the question whether to remove a sitting judge or justice. It would be inappropriate for me, as a nominee to the federal judiciary, to comment on whether and how Congress exercises that authority.

There have been recent reports that the Heritage Foundation was planning to run a secret clerkship training program.¹ I am generally concerned about growing attempts by outside groups to buy influence in the judiciary.

- 1. Do you believe it is appropriate for sitting judges to participate in trainings designed to help law clerks with a particular ideological perspective advance their beliefs within the judiciary?**

Whether a sitting judge should participate in a training program for law clerks depends on various factors including, but not limited to, the specific nature, content and objectives of the program. Sitting judges must make this determination on a case-by-case basis after considering the particular details of the program and consulting the Code of Conduct for United States Judges. It is impossible for me to make a determination regarding the appropriateness of a sitting judge participating in a program without knowing the specific details of the program in question.

¹ Adam Liptak, *A Conservative Group's Closed-Door 'Training' of Judicial Clerks Draws Concern* N.Y. Times (Oct. 18 2018) <https://www.nytimes.com/2018/10/18/us/politics/heritage-foundation-clerks-judges-training.html>.

- 2. Please list all meetings, conferences or events affiliated with the Federalist Society in which you have participated.**

Over the course of my 26 years as a lawyer I have been a member of various legal organizations, including the Federalist Society. Over this period of time, I have participated in thousands of meetings, conferences and events sponsored by different groups. It is impossible for me to list “all meetings, conferences or events affiliated with the Federalist Society,” or any of the other groups in which I have participated over the past 26 years. However, since approximately 1995 I have attended lunchtime programs put on by the Federalist Society’s Tampa Bay Lawyers Division (approximately 2–4 times a year, most recently on 10/23/18 and 2/8/18); the Federalist Society’s Florida Conference (2016, 2017, and 2018); and the Federalist Society’s National Convention (approximately 6–8 times, most recently in 2014). I also recall attending 2–3 Federalist Society events while I was in law school at the University of Pennsylvania in the late 1980s and early 1990s.

Questions for the Record for Thomas P. Barber
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees 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.

Nomination of Thomas P. Barber
United States District Court for the Middle District of Florida
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QUESTIONS FROM SENATOR BOOKER

1. As you no doubt noticed, one side of the dais at your October 17 hearing before the Senate Judiciary Committee was empty, and no Ranking Member was present. The Senate was on a month-long recess, and this hearing was held on that date over the objection of every member of the minority on this Committee.

- a. Do you think it was appropriate for the Committee to hold a nominations hearing while the Senate was in recess before an election, *and* without the minority's consent—which the Committee has never done before?

The appropriateness of the Committee's actions is a question for the Committee and for the Senate. As a nominee to the judiciary, it would be inappropriate for me to offer an opinion on that issue.

- b. Do you think this unprecedented hearing was consistent with the Senate's constitutional duty under Article II, Section 2 to provide advice and consent on the President's nominees?

Please see my answer to Question 1(a).

- c. Did you indicate any objection to anyone in the Administration or on the majority side of the Committee about the timing of your confirmation hearing?

No.

2. 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.¹ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.² These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.³ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴

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

Yes. As a state court judge, I am particularly aware of this issue and I make it a point to keep this concern in mind at all times when making decisions affecting the lives of other people.

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

Yes. I am aware of various academic studies on this subject that have demonstrated this to be true. As a state court judge, I am particularly aware of this issue and I make it a point to keep this concern in mind at all times when making decisions affecting the lives of other people.

- 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 attended at least four different continuing education seminars where the issue of implicit racial bias has been discussed as part of the program. These include: “Judicial Decision Making” at the Florida College of Advanced Judicial Studies; “Perception is Reality: Identifying the Hidden Dangers of Bias in our Profession” at the Hillsborough County Bar Association; “Fairness and Diversity” at the Florida College of Advanced Judicial Studies; and “Judicial Fact-Finding and Decision Making” at the Florida College of Advanced Judicial Studies. These seminars would probably have included written materials on the subject of implicit bias, but I do not recall specific titles or citations.

¹ 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>.

² *Id.*

³ 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>.

⁴ *Id.*

3. 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.⁵ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.⁶

- 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 personally studied this issue sufficiently to have an opinion. However, I appreciate its importance and believe it is worthy of serious consideration by the public and our elected representatives.

- 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.

I have not personally studied this issue sufficiently to have an opinion. However, I appreciate its importance and believe it is worthy of serious consideration by the public and our elected representatives.

4. 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.

5. Do you believe that *Brown v. Board of Education*⁷ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Pursuant to Canons 2, 3(a) and 5 of the Code of Conduct for United States Judges, it would not be appropriate for me as a district court judicial nominee to answer this question in connection with this proceeding.

6. Do you believe that *Plessy v. Ferguson*⁸ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No, and this was recognized by the United States Supreme Court in *Brown*.

7. 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. Lawyers assisting me with this nomination have not instructed or suggested particular answers. Ultimately, each nominee has to make his or her own decision as to whether they can ethically answer a question consistent with the various applicable Canons.

8. 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.”⁹ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

The Supreme Court has held that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims. However, because of ongoing cases concerning the nature and substance of the procedures guaranteed by the Constitution it would be improper for me to comment further.

⁵ 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>.

⁶ *Id.*

⁷ 347 U.S. 483 (1954).

⁸ 163 U.S. 537 (1896).

⁹ 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 October 24, 2018
For the Nomination of

Thomas P. Barber, to the U.S. District Court for the Middle District of Florida

1. At your hearing, you suggested your knowledge of the U.S. Supreme Court’s affirmative action case law was somewhat limited—stating, for example, that you had not read the Michigan cases on affirmative action.
 - a. **What did the Supreme Court hold in *Bakke*, *Gratz*, *Grutter*, *Fisher I*, and *Fisher II*?**

Regents of University of California v. Bakke, 438 U.S. 265 (1978): The United States Supreme Court held that the special admissions program at the University of California was illegal. However, the Supreme Court further held that race may be one of a number of factors considered by a school when reviewing applications.

Gratz v. Bollinger, 539 U.S. 244 (2003): The United States Supreme Court held that the University of Michigan’s freshman admissions policy violated the Equal Protection Clause of the United States Constitution because its use of race was not narrowly tailored to achieve the asserted compelling state interest in diversity. The Supreme Court reiterated that while race may be one of a number of factors considered by the University, it could not be a decisive factor, as it was in the University’s admissions system. In *Gratz*, the unconstitutional program automatically awarded points to applicants from certain racial minorities.

Grutter v. Bollinger, 539 U.S. 306 (2003): The United States Supreme Court held that the University of Michigan Law School had a compelling interest in diversity, and that the admissions program was narrowly tailored to serve the compelling interest. As such, the Supreme Court held that the admissions program did not violate the Equal Protection Clause of the United States Constitution. In *Grutter*, the constitutional admissions program used race as one of many “plus factors” that considered the overall individual contribution of each candidate.

Fisher v. University of Texas at Austin, et al., 570 U.S. 297 (2013) (“*Fisher I*”): The United States Supreme Court held that because the Fifth Circuit Court of Appeals did not apply the correct standard of review (strict scrutiny), its decision affirming summary judgment was incorrect. The case was remanded to be evaluated under the proper standard.

Fisher v. University of Texas at Austin, et al., 136 S.Ct. 2198 (2016) (“*Fisher II*”): The United States Supreme Court held that the University’s admissions program did not violate equal protection. The admissions policy took race into

consideration as one of many factors that considered the overall individual contribution of each academically qualified admissions candidate.

b. Is racial diversity important in educational institutions?

Yes.

c. As a practical matter, do you believe that educational institutions are likely to be able to achieve meaningful racial diversity without recognizing and taking account of race?

Having no training or experience as an admissions officer or administrator at an educational institution, I cannot answer this question without speculating.

d. Does the U.S. Constitution allow an educational institution to consider race if it eliminates race-based considerations and thereafter experiences a reduction in minority enrollment?

Pursuant to Canons 2, 3(a) and 5 of the Code of Conduct for United States Judges, it would not be appropriate for me, as a district court nominee, to comment on potential issues that could come before me as a district court judge.

2. District court judges have great discretion when it comes to sentencing defendants. In considering your nomination, it is important that we understand your views on sentencing, while appreciating that each case must be evaluated on its specific facts and circumstances.

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

Sentencing people is the most difficult part of being a judge. If fortunate enough to be confirmed as a district court judge, I would apply the procedure set forth by the applicable rules, statutes and case law from the Eleventh Circuit Court of Appeal and the United States Supreme Court. Prior to sentencing a defendant, I would review the indictment, pre-sentence investigation report, affidavits submitted by the defendant or Government, written sentencing memoranda, oral arguments made by the parties, evidence presented for the specific purpose of sentencing, and any statements that either the defendant or the victim(s) chose to make. After carefully considering the individual factors enumerated in 18 U.S.C. § 3553(a), I would calculate the proper Sentencing Guidelines range. I would finally consider whether there was any basis for a departure from the Guidelines. I would independently evaluate each case on its own specific facts in order to individually determine a fair and just sentence.

b. As a new federal judge, how do you plan to determine what constitutes a fair and proportional sentence?

I would determine what constitutes a fair and proportional sentence by following the procedure outlined in the previous answer. Furthermore, I would rely on my almost 14 years of experience as a state court judge, and my experience as a practicing lawyer representing both sides (prosecution and criminal defendants), to render a fair and proportional sentence for each defendant after taking into account the unique circumstances of each individual case.

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

The Guidelines are advisory, not mandatory. Judges may consider a sentence outside of the advisory Guidelines range if appropriate after considering the factors set forth in 18 U.S.C. § 3553(a) (requiring a sentence that is “sufficient but not greater than necessary to comply with” various statutory factors). When imposing a sentence, it is important for judges to independently evaluate each case on its own specific facts to individually determine a fair and just sentence. The case law interpreting 18 U.S.C. § 3553(a) includes a broad range of factors and considerations, and I would carefully consider this body of law when making important decisions of this nature.

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.¹

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

I am not familiar with Judge Reeves’ work concerning mandatory minimum sentences.

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

The equity of mandatory minimum sentences is properly considered and determined by Congress. As a district court judicial nominee, it would be inappropriate to comment on the policy decisions of Congress. *See* Canons 2, 3(a) and 5 of the Code of Conduct for United States Judges.

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

Florida has various minimum mandatory sentencing provisions in its criminal laws. At times in my nearly 14 years as a state court judge I have been required by law to impose minimum mandatory sentences in cases

¹ Judge Danny C. Reeves, Responses to Senators’ Questions for the Record, <https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf>.

where I would have imposed a lower sentence absent that statutory requirement. In such situations, I have imposed the sentence required by Florida law even though I would have applied a different sentence if I were permitted to.

- iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and he has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.² **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 fortunate enough to be confirmed, I would impose all mandatory minimum sentences required by the law. However, I would not hesitate to state on the record, where appropriate, that I would have imposed a lesser sentence but for the statutory requirement. I have done this as a state court judge. However, I would not personally criticize the policy decisions of Congress.

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

Under the United States Constitution, charging decisions are left to the Executive Branch and judges are required to impose all mandatory minimum sentences required by the law. However, if fortunate enough to be confirmed, I would not hesitate to question prosecutors, when appropriate, regarding their charging policies as they relate to specific cases. These conversations, of course, must be on the record in connection with a specific case with all parties present. I have done this as a state court judge.

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

Pursuant to the United States Constitution, matters of clemency are reserved to the Executive Branch. It would not be appropriate for a judge to get involved in the clemency process.

- e. 28 U.S.C. § 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**

² See, e.g., Stephanie Clifford, *Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose*, N.Y. 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>.

alternatives to incarceration?

Yes. I have done this as a state court judge.

3. 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. *See* Canons 1, 2 and 3, Code of Conduct for United States Judges.

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

I believe that racial disparities exist within the criminal justice system, but I have not studied the research on this issue in detail.

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

- a. **Do you believe that 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.