

**Nomination of Stephanie Dawkins Davis to the United States District Court for the
Eastern District of Michigan
Questions for the Record
May 29, 2019**

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?

Never.

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?

No. It is not proper for a district court judge to question Supreme Court precedent under either circumstance.

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

District court decisions are not binding precedent. Thus, if a district court disagrees with a prior decision of the court, it is free to issue a contrary ruling so long as its ruling does not conflict with any published decision of its circuit court or the U.S. Supreme Court. A district court may also revisit its own prior rulings or judgments as consistent with the provisions of Fed. R. Civ. P. 59, 60 and any local rule which allows for reconsideration of the court's decisions (e.g. E.D. Mich. Local Rule 7.1(h)).

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

The Supreme Court determines if and when it is appropriate to overturn its own precedents. As a nominee to the district court, and as a sitting magistrate judge, such a determination does not fall within my purview.

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 decisions are equally binding on the lower courts and as a sitting magistrate judge I am duty-bound to fully and faithfully apply those precedents. If confirmed, I will fully and faithfully apply *Roe* and all precedent.

b. Is it settled law?

Yes. All Supreme Court rulings constitute settled law that lower courts are obliged to fully and faithfully apply.

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. All Supreme Court rulings constitute settled law that lower courts are obliged to fully and faithfully apply.

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?

As a sitting magistrate judge and as a district court nominee it would be inappropriate under Canon 2A of the Code of Conduct for United States Judges to opine on the propriety of an opinion or constituent parts of an opinion of the Supreme Court. As a magistrate judge and if confirmed as a district judge I will fully and faithfully apply both Sixth Circuit and Supreme Court precedent.

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

Heller expressly stated that “the right secured by the Second Amendment is not unlimited.” The Court further added, “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). To comment further on the application of *Heller* to current or future gun

regulations would be inconsistent with my obligations under Canons 2 and 3A(6) of the Code of Conduct for United States Judges. As a magistrate judge and if confirmed as a district judge, I would continue to be bound by *Heller*, which I will fully and faithfully apply.

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

As a sitting magistrate judge and as a district court nominee it would be inappropriate under Canons 2A and 3A(6) of the Code of Conduct for United States Judges to opine on the propriety of an opinion or constituent parts of an opinion of the Supreme Court. As a magistrate judge and if confirmed as a district judge, I will fully and faithfully apply both Sixth Circuit and Supreme Court precedent

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?

As a sitting magistrate judge and as a district court nominee it would be inappropriate under Canons 2A and 3A(6) of the Code of Conduct for United States Judges to opine on the propriety of an opinion or constituent parts of an opinion of the Supreme Court. As a magistrate judge and if confirmed as a district judge, I will fully and faithfully apply both Sixth Circuit and Supreme Court precedent

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

As a sitting magistrate judge and as a district court nominee it would be inappropriate under Canons 2A, 3A(6), and 5 of the Code of Conduct for United States Judges to express a view on this issue, except to affirm that I will and would continue if confirmed to follow existing precedent.

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

Please see my response to Question 5(b).

6. 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?**

I interviewed with members of the White House Counsel’s Office and DOJ’s Office of Legal Policy on January 5, 2018, and while there was some discussion about my experience in handling Social Security appeals in the district court, I do not recall any questions concerning 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?**

No.

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

In approaching cases that deal with administrative law, I follow Sixth Circuit and Supreme Court precedent in making my rulings—most of which have been in the area of Social Security appeals.

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

One canon of statutory construction provides for the review of legislative history when the plain language of a statute is ambiguous.

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

No.

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

After receiving the questions from DOJ’s Office of Legal Policy, I carefully reviewed them, then reviewed my own Senate Judiciary Committee Questionnaire as well as relevant case law and materials and set about drafting responses. I forwarded those responses to OLP staff and subsequently finalized the responses on my own.

Written Questions for Stephanie Dawkins Davis
Submitted by Senator Patrick Leahy
May 29, 2019

1. You stated in your investiture remarks that you draw guidance from the Bible in carrying out your judicial duties.

(a) Will you commit to leaving all religious beliefs at the courthouse door when hearing cases, using only the Constitution and applicable governing laws in your decisions?

In my investiture remarks I noted that the book of Deuteronomy states, “You shall not distort justice. You shall not be partial. And you shall not take a bribe. Justice and only justice you shall pursue.” Deuteronomy, 16:18-20. The quote was included because it is consistent with the Judicial Canons to which I am already bound as a magistrate judge and with the law. I am nevertheless, sensitive to the concern raised by this question and without reservation assure that I decide cases based only on the Constitution and applicable governing law. If confirmed as a district judge, I will continue to do so.

2. At a 2017 naturalization ceremony over which you presided, you stated that immigrants come to the United States “to have the freedom to pursue [their] path to happiness without undue intrusion from the government.”

(a) What do you believe would constitute “undue intrusion from the government” on the rights and freedoms of immigrants? Can you provide specific examples of government policies or practices that would amount to such “undue intrusion”?

In referencing undue intrusion by the government, I was juxtaposing the freedoms enjoyed in the United States against the practices of the governments of some of the foreign countries from which the new citizens emigrated that restrict the freedoms of their citizens. The non-exhaustive examples that I included in my remarks thus addressed freedoms that are subject to suppression in some of the new citizens’ native lands: freedom to pursue their interests as they see fit, freedom to practice their religions, freedom to speak against the government, freedom to seek an education regardless of sex or gender and freedom of movement within the country.

3. 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?**

In *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006), the Supreme Court acknowledged that “[t]he definition of words in isolation...is not necessarily controlling in statutory construction.” Furthermore, the “[i]nterpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.” *Id.* As a magistrate judge, and if confirmed, I will examine the text and structure of the statute considering how the provisions of the statute work together to form a consistent whole, and I will faithfully follow the applicable precedents of the Supreme Court and the Sixth Circuit addressing statutory construction.

4. 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?**

Article III of the Constitution provides for the independence of the judiciary. Specifically, it established the judiciary as a free-standing branch of the federal government and created a lifetime appointment with an irreducible salary for judges to prevent the influence of political and other interests that might affect impartiality. It is a cornerstone of our democracy, and if confirmed I will strive to maintain and preserve the independence of the judiciary.

- (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 answer to Question 4(b) above.

5. 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?**

In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court acknowledged its authority to review the decisions of the President even during wartime. *See also Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

6. 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?

The operation of our government relies on the concept of comity between the three branches of government. The Court speaks through its orders, and holds the power of contempt for non-compliance with its orders. As to the specific hypothetical posed, as a magistrate judge and district court nominee, I believe it would be inappropriate to forecast, hint or otherwise predict how a court should or would respond under such circumstances. *See* Canon 3A(6) of the Code of Conduct for United States Judges.

7. 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 *Hamdan 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.”

The Constitution provides certain war powers to both the President and to Congress. The question of how those powers are divided has from time to time been raised in litigation. If confirmed and faced with such a question, I would follow the Supreme Court’s precedents, the Constitution, and any statutory authority applicable to the question.

(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?

Even in times of war, the U.S. Supreme Court has acted to limit presidential acts, indicating that no man is above the law. If confirmed and faced with such a question, I would follow the Supreme Court’s precedents, the Constitution, and any applicable statutory authority.

(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 answer to Question 7(b).

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

As in all matters, the courts should operate independently to fully and faithfully apply the Constitution, statutes, and Supreme Court precedent to all cases and controversies that come before them. If confirmed and faced with such a question, I would follow the Supreme Court’s precedents, the Constitution, and any applicable statutory authority.

9. In a 2011 interview, Justice Scalia argued that the Equal Protection Clause does not extend to women.

(a) Do you agree with that view? Does the Constitution permit discrimination against women?

The Supreme Court has ruled that the Equal Protection Clause does, in fact, apply to women. *See, e.g., United States v. Virginia*, 518 U.S. 515 (1996). If confirmed, I would faithfully follow this and other precedents of the Supreme Court.

10. **Do you agree with Justice Scalia’s characterization of the Voting Rights Act as a “perpetuation of racial entitlement?”**

The Supreme Court has not adopted this characterization in any ruling of which I am aware. If confirmed, I will faithfully adhere to Supreme Court precedent concerning the Voting Rights Act.

11. **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 of the Constitution states “ no Person holding any Office of Profit or Trust under [the United States], shall, without the consent of Congress, accept of any present, Emolument, Office or Title, of any kind whatever, from any King, Prince or foreign State.”

12. 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?

As a general rule, an appellate court should affirm the findings of the district court unless they are clearly erroneous. The scope of *Shelby County* in particular appears to be the subject of ongoing litigation around the country. Therefore, it would be inappropriate for me to opine in that regard under Canon 3A(6) of the Code of Conduct for United States Judges.

13. **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 Constitution expressly empowers Congress to enact “appropriate legislation” to enforce the protections of each of the listed amendments. U.S. Const. amend. XIII, § 2; U.S. Const. amend. XIV, § 5; U.S. Const. amend. XV, § 2.

14. 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?**

Lawrence v. Texas is precedential authority that all lower courts are duty-bound to apply. Thus, as a magistrate judge and if confirmed, I will fully and faithfully apply the Court’s ruling to the facts of any relevant case before me.

15. 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?**

The doctrine of *stare decisis* pertains to the Supreme Court’s adherence to its own precedents. The Supreme Court determines if and when it is appropriate to overturn its prior decisions. As a nominee to the district court, and as a sitting magistrate judge, such a determination does not fall within my purview.

16. 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.

I will analyze any purported conflict pursuant 28 U.S.C. §§ 144 and 455, which address judicial recusal and disqualification. The United States District Court for the Eastern District of Michigan has an automated conflict screening software program to identify conflicts of interest for each judge, which is referred to as the "Automated Daily Summary Conflict Checking Report." I have *sua sponte* recused myself from matters involving my husband's employer, Ford Motor Company, in which he also owns stock and matters in which certain close personal friends and former colleagues are counsel of record, as well as cases about which I have knowledge from my time at the U.S. Attorney's office.

17. 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?

Throughout my career, first as a lawyer and more recently as a judicial officer, I have worked to ensure equal access to justice for litigants. During my years in private practice, I provided *pro bono* services at the Women's Justice Center in Detroit assisting victims of domestic violence to obtain personal protection orders against their abusers. I also participated in my former firm's *pro bono* program, representing a prisoner in a civil rights matter in federal district court. And as a magistrate judge, I have spoken to lawyers at our local Federal Bar Association meetings about the importance of *pro bono* work, I regularly refer *pro se* litigants to the court's *pro se* legal clinic which provides legal assistance for civil litigants, and I follow Sixth Circuit and Supreme Court precedent in considering requests for appointment of counsel by civil litigants. Further, I have expressed my interest in serving on my court's *Pro Bono* Committee.

18. 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.

19. Do you believe there are any discernible limits on a president's pardon power? Can a president pardon himself?

I have not had occasion to address this issue, nor have I conducted any research in this regard. Further, as a magistrate judge and district court nominee, I believe it would be inappropriate to forecast, hint or otherwise predict how a court should or would rule under such circumstances given the potential for the issue to be raised given the current public discourse. *See* Canon 3A(6) of the Code of Conduct for United States Judges.

20. 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?

The Constitution provides that Congress shall have the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art 1, § 8, cl. 3. It also grants Congress the authority to enforce the provisions of the Fourteenth Amendment where it states: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." U.S. Const. amend. XIV, § 5.

The Supreme Court has addressed the scope of congressional powers under both the Commerce Clause and the Fourteenth Amendment. *See United States v. Lopez*, 514 U.S. 549 (1995); *Gonzales v. Raich*, 545 U.S. 1 (2005); *Nat'l Federation of Ind. Bus. v. Sebelius*, 567 U.S. 519 (2012); *City of Boerne v. Flores*, 521 U.S. 507 (1997). If confirmed, I would fully and faithfully apply these and other precedents to the facts of any case where such questions are raised.

21. 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?**

I have not had occasion to address this issue, nor have I conducted any research in this regard. Further, as a magistrate judge and district court nominee, I believe it would be inappropriate to forecast, hint or otherwise predict how a court should or would rule under such circumstances, except to say that I would fully and faithfully apply the *Hawaii* decision. See Canon 3A(6) of the Code of Conduct for United States Judges.

22. **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.**

The plurality opinion in that case described undue burden as state action resulting in the “imposition of substantial obstacles to the woman’s effective right to elect the procedure.” *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 846 (1992). However, no definition garnered a majority of the Court and the issue continues to be litigated in the lower courts to this day. Therefore, it would be inappropriate for me to opine in that regard under Canon 3A(6) of the Code of Conduct for United States Judges.

23. 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 sitting magistrate judge and as a district court nominee it would be inappropriate under Judicial Canon 2A of the Code of Conduct for United States Judges to opine on the propriety of a doctrine established by and maintained by the Supreme Court. As a magistrate judge and if confirmed as a district judge I will fully and faithfully apply both Sixth Circuit and Supreme Court precedent concerning the application of this doctrine.

24. 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?**

As a magistrate judge and district court nominee, I believe it would be inappropriate to forecast, hint or otherwise predict how a court should or would rule based on a supposition of how facts may develop in the future, except to say that I would fully and faithfully apply *Carpenter* and all other relevant precedent. *See* Canon 3A(6) of the Code of Conduct for United States Judges.

25. 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.

- (b) 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?**

Notwithstanding the caveat contained in this question, as a sitting magistrate judge and as a nominee to the district court, I believe it would be inappropriate for me to comment on an abstract question of law that might be raised in litigation. If confirmed, I would fully and faithfully apply the Constitution and any applicable Supreme Court and Sixth Circuit precedent.

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

Judges being free from political influence or the appearance of political influence is of critical importance both to public confidence in the judiciary and to the constitutionally mandated independence of the judicial branch. Judges must vigilantly guard against political influence by committing to adherence to the U.S. Constitution, statutes, and applicable precedent.

**Nomination of Stephanie Dawkins Davis
to the United States District Court for the Eastern District of Michigan
Questions for the Record
Submitted May 29, 2019**

QUESTIONS FROM SENATOR WHITEHOUSE

1. 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.

2. 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?

To the extent that the metaphor stands for the proposition that a judge must act fairly and impartially to apply the law to the facts of a case, I agree. But, I do not understand the metaphor to encompass the comprehensive responsibilities of the office. For instance, it is a judge’s responsibility to maintain order in the court, to run an efficient docket, to maintain the integrity of the office, and to attend to administrative details that benefit the overall administration of justice.

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

I believe the role of a federal judge is to administer justice without respect to persons, do equal right to the poor and to the rich and to faithfully and impartially discharge all duties of the office pursuant to the Constitution and laws of the United States. See 28 U.S.C. § 453. As a general rule, the court does not factor in the practical consequences of a decision. However, in certain instances, the law requires consideration of the practical consequences. For instance, when ruling on a motion for preliminary injunction, the court must consider whether the moving party will suffer irreparable harm without the court’s intervention. And the court must also balance the hardships of the parties. Additionally, there are a number of circumstances in which the court must assess whether a party will suffer or has suffered prejudice in ruling on a motion. If confirmed, I will follow all Supreme Court and Sixth Circuit precedent in applying any such considerations.

3. 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?

No. The Supreme Court has stated that the court must look to the substantive law to determine whether there is a material fact in dispute. As to whether the dispute is of a material fact is “genuine,” the court must ask the objective question of whether a reasonable jury could return a verdict for the nonmoving party. The court is required to view the facts in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If confirmed, I will fully and faithfully apply this and

all other precedent of the Supreme Court and the Sixth Circuit in ruling on motions for summary judgment.

4. 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?

Courts are routinely called upon to apply the reasonable person or reasonable jury test in administering justice. It is my view that in evaluating what a reasonable person or group of persons would do, a judge must consider the broad scope of human experience which necessarily includes appreciation of the reality of others outside of oneself. Further, in fashioning a sentence pursuant to 18 U.S.C. § 3553(a), the court is required to take into consideration the history and characteristics of the defendant amongst other factors.

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

A judge's personal life experiences can assist the judge in effectively interacting and communicating with lawyers, litigants, jurors and others who participate in the justice system. For instance, a judge may draw upon her experience with listening, public speaking and providing feedback to be more effective in overseeing the matters assigned to her. However, a judge's decision-making must be fair and impartial – free from the influence of any personal feelings or preferences the judge may have, and I will vigilantly adhere to that proscription.

- c. Do you believe you can empathize with "a young teenage mom," or understand what it is like to be "poor or African-American or gay or disabled or old"? If so, which life experiences lead you to that sense of empathy? Will you bring those life experiences to bear in exercising your judicial role?

Over the course of my life and career I have encountered and engaged with individuals from all walks of life and along the spectrum of socio-economic status. I grew up in working class neighborhoods, attended public schools and have frequently been the only or one of few African American(s) and/or women in various settings. This background has contributed to my knowledge and understanding of the breadth of the human experience and has enhanced my communication skills. If confirmed, I will bring those skills to the judicial role. However, a judge's decision-making must be fair and impartial – free from the influence of any personal feelings or preferences the judge may have, and I will vigilantly adhere to that proscription.

5. 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 jury ensures that, absent a waiver, civil disputes and criminal charges will be decided by the peers of the litigants.

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

Inasmuch as the enforceability of mandatory pre-dispute arbitration clauses has been the subject of recent litigation before the Supreme Court in *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407 (2019), and related issues remain a topic of potential future litigation, I believe it would be inappropriate for me to opine concerning the legal analysis of such clauses.

- 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 5(b).

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

The Supreme Court has addressed this issue in *City of Boerne v. Flores*, 521 U.S. 507 (1997) and in *Gonzalez v. Carhart*, 550 U.S. 124 (2007) amongst other cases. As a sitting magistrate judge and as a district court nominee it would be inappropriate under Canons 2A, 3A(6), and 5 of the Code of Conduct for United States Judges to express a view on this issue, except to affirm that I will and would continue if confirmed to follow existing Supreme Court and Sixth Circuit precedent.

7. 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?

I reviewed the Advisory Opinion for the first time in response to these questions.

- 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.
 - ii. Determining whether the seminar is supported by private or otherwise anonymous sources.
 - iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.
 - iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.
 - 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.

As a magistrate judge and if confirmed as a district judge, I will consider my participation in any educational seminar in relation to my obligations under the Canons of the U.S. Code of Conduct for the Judiciary and I will consider each of the factors listed in AO 116 in assessing whether my participation is appropriate.

- 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?

Yes.

8. Recent reporting in the Washington Post (“A conservative activist’s behind-the-scenes campaign to remake the nation’s courts,” May 21, 2019) 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?

Yes.

- 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 sitting magistrate judge and as a district court nominee it would be inappropriate under Canons 2A, 3A(6), and 5 of the Code of Conduct for United States Judges to express a view on this issue, except to affirm that I will and would continue if confirmed to follow any Supreme Court and Sixth Circuit precedent which may exist on the subject.

- 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?

Article III of the Constitution provides for the independence of the judiciary. Specifically, it established the judiciary as a free-standing branch of the federal government and created a lifetime appointment with an irreducible salary for judges to prevent the influence of political and other interests that might affect impartiality. It is a cornerstone of our democracy, and if confirmed I will strive to maintain and preserve the independence of the judiciary.

Regarding the propriety of spending disclosures, as a sitting magistrate judge and as a district court nominee it would be inappropriate under Canons 2A, 3A(6), and 5 of the Code of Conduct for United States Judges to express a view on potential laws or regulations being contemplated, except to affirm that I will and would continue if confirmed to follow any Supreme Court and Sixth Circuit precedent which may exist.

- 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. I do not have any such knowledge.

- 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?

I am not familiar with Mr. Leo, and as a sitting magistrate judge and district judge nominee it would not be appropriate for me to opine as to the propriety of his constitutional/political views.

Questions for the Record for Stephanie Davis
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 Stephanie Dawkins Davis
United States District Court for the Eastern District of Michigan
Questions for the Record
Submitted May 29, 2019

QUESTIONS FROM SENATOR BOOKER

1. In 2011, you discussed the importance of diversity in jury selection on a Michigan public television program called “Due Process.”¹ You said, “Everyone in the courtroom – from the judge to the prosecutor to the federal defender or the defense attorney – is concerned with a fair cross section of Americans to sit as jurors. And when that doesn’t happen, then that’s a problem for everyone in the courtroom.”²

a. If confirmed, what would you do as a district court judge to ensure that juries in your courtroom are diverse?

If confirmed, I would continue to participate in any educational initiatives of the court to inform diverse communities of the public on the importance of jury service. I would also fully and faithfully apply the law as articulated by the Supreme Court in *Batson v. Kentucky* to ensure that members or racial minorities are not being unconstitutionally excluded from petit juries.

b. In what other ways would you promote diversity in your courtroom?

I have and will continue if confirmed to host and invite students from the surrounding Flint and Detroit communities to observe court and to visit other justice system participants in the courthouse such as the U.S. Marshals, U.S. Probation and Pretrial Services. I will also continue to participate in the Just The Beginning Foundation, which is an organization offering pipeline programs directly aimed at inspiring students of color and other underrepresented groups as early as middle school to consider careers in the legal profession and the judiciary.

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.³ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.⁴ 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.⁵ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁶

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.

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 read a number of articles on the issue of implicit bias and have attended presentations concerning the issue – including a presentation at the Sixth Circuit Judicial Conference in approximately 2016. I did not maintain a list of my readings such that I can recall articles by name. I have also read The New Jim Crow by Michelle Alexander and Locked In by John Pfaff, both of which touch upon to some degree questions of bias in the criminal justice system.

- 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.⁷ Why do you think that is the case?

While I reviewed the cited study close in time to when it was issued, I have not conducted extensive study on the issue such that I am able to make a conclusive determination as to the specific reasons for the sentencing disparity cited – though I recognize that a number of factors likely contribute.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men are to be charged with federal offenses that carry harsh mandatory minimum sentences.⁸ Why do you think that is the case?

I am not aware of this study and have not had occasion to review any study focused on charging policies or processes in federal cases vis-a-vis race such that I can supportably opine on the reasons for the noted disparity.

- 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?

I think that judges can first acknowledge that implicit racial bias exists and guard against allowing it to seep into their own decision-making by asking questions along the way about their own evaluation of the factors that impact sentencing, including, but not limited to, whether they are placing the same value on the same factors across racial lines. If confirmed, I will guard against any such bias and ensure that all persons who appear in my courtroom are treated fairly, respectfully, and equally.

¹ Interview with attorney Henry Baskin on “Due Process,” WTVS Channel 56 (May 2, 2011), Recording available at <https://www.youtube.com/watch?v=UwrtnBGf9nM>.

² *Id.*

³ 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>.

⁴ *Id.*

⁵ 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>.

⁶ *Id.*

⁷ U.S. SENTENCING COMM’N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

⁸ Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

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.⁹ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.¹⁰

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 and have no basis to opine one way or another on it.

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 studied this issue and have no basis to opine one way or another on it.

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

No.

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

I do not subscribe to any particular label. However, I acknowledge that the application of the Constitution or any statute begins with reading the language of the law in the context of its structural components. If confirmed, I will follow Sixth Circuit and Supreme Court precedent addressing acceptable methods of constitutional and statutory construction.

7. 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?

⁹ 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>.

¹⁰ *Id.*

The Supreme Court has condoned the use of reliable legislative history in statutory interpretation where the statutory language is not clear. *See, e.g., Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 568 (2005). If confirmed, I will follow Sixth Circuit and Supreme Court precedent addressing acceptable methods of constitutional and statutory construction.

- 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 7(a).

- 8. Would you honor the request of a plaintiff, defendant, or witness in your courtroom, who is transgender, to be referred in accordance with their gender identity?

Yes.

- 9. Do you believe that *Brown v. Board of Education*¹¹ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Yes. As I noted at my hearing before the Judiciary Committee, I spoke publicly about this case prior to my judicial service and I have subsequently endorsed the position. This is so in part because of a somewhat personal connection to the case that I learned about in adulthood. My great aunt and uncle, on behalf of two of my cousins who were the named plaintiffs, brought a predecessor case to *Brown* called *Webb v. School District No. 90*, 167 Kan. 395 (1949). In the case, a young Thurgood Marshall and a fellow New York attorney, along with local attorneys, successfully challenged a local school district's drawing of district lines to maintain racially segregated schools in Johnson County, Kansas.

- 10. Do you believe that *Plessy v. Ferguson*¹² was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No.

- 11. 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.

¹¹ 347 U.S. 483 (1954).

¹² 163 U.S. 537 (1896).

12. 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.”¹³ Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

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 continue to evaluate matters of recusal and disqualification in accordance with those statutes.

13. 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.”¹⁴ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

The Supreme Court has stated that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). If confirmed and faced with this issue, I will fully and faithfully apply the Court’s holding in *Zadvydas* and any other applicable precedent.

¹³ 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>.

¹⁴ 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 May 29, 2019
For the Nomination of**

Stephanie Davis, to the U.S. District Court for the Eastern District of Michigan

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?**

If confirmed, I would (1) review the plea agreement of the parties, if any and the presentence report prepared by U.S. Probation including the advisory sentencing guidelines, (2) consider the sentencing memorandums and any supporting documents submitted by the parties as well as the allocution of the defendant and (3) consider the sentencing factors required under 18 U.S.C. § 3553(a).

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

If confirmed, I will determine what constitutes a fair and proportional sentence by using the process described above and when appropriate by also using my court's Sentencing Council which affords judges in my district the opportunity to present their cases to a three-judge panel of their peers for feedback and insight to consider.

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

The Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), determined that the United States Sentencing Guidelines are advisory rather than mandatory. Sentencing decisions are reviewed for unreasonableness. *Id.* Despite their advisory nature, the Guidelines also provide grounds for the court to consider when a departure is appropriate, such as when a defendant has provided substantial assistance in the prosecution of another (U.S.S.G. § 5K1.1 providing for a downward departure) or when death resulted from the crime of conviction (U.S.S.G. § 5K2.1 providing for an upward departure). In addition to the stated examples, § 5K provides a number of other circumstances in which it may be appropriate to depart from the calculated guideline range. If confirmed, I will faithfully apply federal sentencing laws along with Supreme Court and Sixth Circuit precedent in arriving at a sentence.

- 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 have not studied the deterrent effect of mandatory minimum sentences, and I am not familiar with any empirical studies which may have addressed the issue. Further, I deem the issue of mandatory minimum sentences to be a policy to be addressed by Congress. Additionally, irrespective of any personal views I may hold, as a magistrate judge and if confirmed as a district judge I will faithfully apply federal sentencing laws along with Supreme Court and Sixth Circuit precedent.

- 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).

- 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).

- 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.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 confirmed, I would state all the reasoning for any sentence that I hand down, including those for which the court lacks discretion. Nevertheless, I would faithfully apply the law as written regardless of any personal views.

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

² 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>

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

I believe it would encroach upon the separation of powers to initiate a discussion with members of the executive branch concerning charging decisions. However, U.S. Attorneys in our district have occasionally engaged the Court about the impact of such policies on the workings of the court and I would provide appropriate input within that framework.

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

No.

- 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.

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.**

I am aware of studies which have shown racial disparities in arrest rates, use of force rates, incarceration rates, and length of sentence rates.

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?**

As a magistrate judge I have put in place a system to ensure that qualified members of minority populations and women are given serious consideration for positions within my chambers. I would continue to do so if confirmed.