

**Nomination of Robert Austin Huffaker, Jr. to the United States District Court for the  
Middle District of Alabama  
Questions for the Record  
Submitted August 7, 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?**

It is never appropriate for lower courts 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?**

A district court judge is required to apply all binding Supreme Court precedent in all decisions. As a general matter, district court judges do not write concurrences or dissents, as they sit alone on cases. If the question is instead asking whether it is proper for a district court judge to question statements by Supreme Court Justices in concurrences or dissents, concurrences and dissents are nonprecedential. A district court judge is required to apply the rule stated in the majority opinion of the applicable precedent.

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

As a general matter, district court opinions are considered nonprecedential. *See McGinley v. Houston*, 361 F.3d 1328, 1331 (11<sup>th</sup> Cir. 2004) (“The general rule is that a district judge’s decision neither binds another district judge nor binds him, although a judge ought to give great weight to his own prior decisions.”). If I am confirmed as a district court judge, were I faced with that issue, I would faithfully apply all relevant Supreme Court and Eleventh Circuit precedent on that issue.

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

The Supreme Court has the authority under the United States Constitution and previous Supreme Court decisions to revisit or overturn its own precedent as it deems appropriate. As a district court judicial nominee, it would not be appropriate for me to comment on the conditions under which it is appropriate for the Supreme Court to overturn its own precedent.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as “super-stare decisis.” A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to

overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that “superprecedent” is “precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

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

*Roe v. Wade*, 410 U.S. 113 (1973), is a decision by the Supreme Court. If confirmed as a district court judge, I will faithfully apply all Supreme Court precedent, including *Roe v. Wade*.

**b. Is it settled law?**

From the perspective of a district court judge, all Supreme Court precedent, including *Roe v. Wade*, is settled law.

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?

From the perspective of a district court judge, all Supreme Court precedent, including *Obergefell v. Hodges*, is settled law.

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 district court judge, I would be bound to follow *Heller*, like all other Supreme Court precedents that have not been overturned or modified. Because these issues are the subject of pending or impending litigation, it would not be appropriate for me to express a view on this issue. *See* Canon 3 of the Code of Conduct for United States Judges.

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

In *Heller*, the Supreme Court held that “the right secured by the Second Amendment is not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008). In its opinion, the Court also addressed certain types of permissible regulations.

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

As a district court judge, I would be bound to follow *Heller*, like all other Supreme Court precedents that have not been overturned or modified. Because these issues are the subject of pending or impending litigation, it would not be appropriate for me to express a view on this issue. *See* Canon 3 of the Code of Conduct for United States Judges.

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?**

Because these issues are the subject of pending or impending litigation, it would not be appropriate for me to express a view on this issue. *See* Canon 3 of the Code of Conduct for United States Judges.

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

Because these issues are the subject of pending or impending litigation, it would not be appropriate for me to express a view on this issue. *See* Canon 3 of the Code of Conduct for United States Judges.

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

Because these issues are the subject of pending or impending litigation, it would not be appropriate for me to express a view on this issue. *See* Canon 3 of the Code of Conduct for United States Judges.

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?**

In January of 2019, I met with personnel from the White House Counsel's Office and the United States Department of Justice. We discussed a variety of topics. I do not recall any specific discussion regarding my views, if any, on administrative law topics.

**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?**

Respectfully, I cannot recall every informal conversation I may have had since 2016, nor do I know whether each person with whom I have spoken during that time may or may not be affiliated with the Federalist Society. That said, I do not believe any such conversations occurred.

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

If I am fortunate enough to be confirmed as a district court judge, I will apply all Supreme Court and Eleventh Circuit precedent, including such precedent on administrative law topics.

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

Because these issues are the subject of pending or impending litigation, it would not be appropriate for me to express a view on this issue. *See* Canon 3 of the Code of Conduct for United States Judges.

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

The Supreme Court has held that a judge may consider legislative history in interpreting a statute in certain situations where the statute is ambiguous. If confirmed as a district court judge, I will faithfully apply Supreme Court and

Eleventh Circuit precedent, including precedent regarding appropriate tools to use in statutory interpretation.

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

No.

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

I read the questions and prepared responses. I then sent my responses to the Justice Department. I then finalized the answers and had them submitted on my behalf.

**Written Questions for R. Austin Huffaker, Jr.**  
**Submitted by Senator Patrick Leahy**  
**August 6, 2019**

1. 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?’”

**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?**

If I am so fortunate to be confirmed as a district court judge, my foremost obligation is to follow binding precedent on the meaning of any statute. As such, I believe reviewing the text and structure of a statute is very important.

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

**(a) 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?**

An independent federal judiciary is established by Article III of the Constitution and critical to the fair administration of justice. These protections are designed to enable judges to make decisions, supported in law, without respect to criticisms in the public that may follow.

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

Please see my response to Question 2(a).

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

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

The Supreme Court held in *Webster v. Doe*, 486 U.S. 592 (1988), that due to national security concerns, the plaintiff’s case under the Administrative Procedure Act could not proceed, explaining that “where Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear.” *Id.* at 603.

4. Many are concerned that the White House’s denouncement of “judicial supremacy” was an attempt to signal that the President can ignore judicial orders. And after the President’s first attempted Muslim ban, there were reports of Federal officials refusing to comply with court orders.

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

As a judicial nominee, I believe it is not appropriate for me to comment in the context of this question. *See* Canon 3(A)(6) of the Code of Conduct for United States Judges. If I am so fortunate to be confirmed, I will faithfully follow my oath of office and relevant binding precedent.

5. 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?**

Article I, Section 8, Clauses 1 to 18 of the Constitution, provide the enumerated powers of Congress, including the power of the purse and sword. In *Hamdi v. Rumsfeld*, 52 U.S. 507 (2004), the Supreme Court stated “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.” *Id.* at 536.

Justice O’Connor famously wrote in her majority opinion in *Hamdi v. Rumsfeld* that: “We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens.”

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

The Constitution gives the powers of foreign and war affairs to Congress and the President. If I am so fortunate to be confirmed as a district court judge, I will follow my oath and faithfully apply all binding Supreme Court and Eleventh Circuit precedent.

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

It appears this question may implicate pending or impending litigation. As a judicial nominee, I must respectfully refrain from responding to this question consistent with Canons 2, 3 and 5 of the Code of Conduct for United States Judges.

7. 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?**

I am not familiar with that remark. In *United States v. Virginia*, 518 U.S. 515 (1996), the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prohibits discrimination against women.

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

The Voting Rights Act is a landmark law of which I will faithfully follow if I am so fortunate to be confirmed as a district court judge.

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

Article I, Section 9, Clause 8, of the Constitution states: “And no Person holding any Office of Profit or Trust under them, shall, without the consent of the Congress, accept any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State.”

10. In *Shelby County v. Holder*, a narrow majority of the Supreme Court struck down a key provision of the Voting Rights Act. Soon after, several states rushed to exploit that decision by enacting laws making it harder for minorities to vote. The need for this law was revealed through 20 hearings, over 90 witnesses, and more than 15,000 pages of testimony in the House and Senate Judiciary Committees. We found that barriers to voting persist in our country. And yet, a divided Supreme Court disregarded Congress’s findings in reaching its decision. As Justice Ginsburg’s dissent in *Shelby County* noted, the record supporting the 2006 reauthorization was “extraordinary” and the Court erred “egregiously by overriding Congress’ decision.”

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

Generally, district courts create the record and appellate courts review that record for error. Established standards of review provide the lens as guidance for the appellate review thereof. The holding of *Shelby County v. Holder*, 570 U.S. 529 (2013), is binding Supreme Court precedent and I will faithfully follow the same if I am confirmed.



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

The Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution demonstrate a defined commitment to counteract racial discrimination. Each provide that Congress has the power to enforce them by “appropriate legislation.”

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

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

The case of *Lawrence v. Texas*, 539 U.S. 558 (2003), is binding Supreme Court precedent and if I am confirmed, I will faithfully apply it as well as all other binding precedent from the Eleventh Circuit.

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

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

I recognize the great importance that stare decisis plays in our legal system by providing stability and predictability. As such, if I am so fortunate to be confirmed, I will follow all binding precedent. In determining if the Supreme Court can deviate from precedent, it may consider the unworkability of the prior decision, the antiquity of the precedent, the reliance at stake, and the quality of the prior reasoning. *Montejo v. Louisiana*, 556 U.S. 778 (2009).

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

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

If I am so fortunate to be confirmed, I will apply the conflict rules and ethical standards for district court judges so as to ensure fairness and impartiality.

15. It is important for me to try to determine for any judicial nominee whether he or she has a sufficient understanding the role of the courts and their responsibility to protect the constitutional rights of individuals, especially the less powerful and especially where the political system has not. 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?**

Courts play an important role in protecting constitutional rights by the fair application of the law and respect for the same. Pursuant to Canon 3(A)6 of the Code of Conduct for United States Judges, it would not be appropriate for me to comment on abstract legal concepts that may require consideration and application to future cases or controversies as a district court judge.

16. Both Congress and the courts must act as a check on abuses of power. Congressional oversight serves as a check on the Executive, in cases like Iran-Contra or warrantless spying on American citizens and politically motivated hiring and firing at the Justice Department during the Bush administration. 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 Trump administration’s conflicts of interest and the events discussed in the Mueller report we make sure that we exercise our own power properly.

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

Yes, generally.

17. **Do you believe there are any discernible limits on a president’s pardon power? For example, President Trump claims he has an “absolute right” to pardon himself. Do you agree?**

Under Canons 2 and 5, of the Code of Conduct for United States Judges, I believe it is not appropriate for me to opine on this issue.

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

The Constitution in Article I, Section 8, Clause 3, expressly allows Congress: “To regulate Commerce with the foreign Nations, and among the several States, and with the Indian Tribes”. The Supreme Court has discussed these powers in several cases. *See, e.g., Gonzales v. Raich*, 545 U.S. 1 (2005); *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62 (2000); *United States v. Lopez*, 514 U.S. 549 (1995).

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

**(a) What do you believe is the “appropriate weight” that executive factual findings are entitled to on immigration issues? Does that weight shift when additional constitutional issues are presented, as in the Establishment Clause claims of *Trump v. Hawaii*? Is there any point at which evidence of unlawful pretext overrides a facially neutral justification of immigration policy?**

In that case, the Supreme Court rejected the plaintiff’s request for a searching inquiry into the justifications for Presidential Proclamation No. 9645, 82 Fed. Reg. 45,161, because such an inquiry would be “inconsistent with the broad statutory text and the deference traditionally accorded the President in this sphere.” If I am so fortunate to be confirmed, I will follow my oath and faithfully apply all binding precedent of the Supreme Court and the Eleventh Circuit in all respects.

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

In *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2309 (2016), the Supreme Court held that “unnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right.” As a judicial nominee, it would not be appropriate for me to comment on specific examples that may arise in future cases or already may be in litigation. *See* Canon 3 of the Code of Conduct for United States Judges.

21. Federal courts have used the doctrine of qualified immunity in increasingly broad ways, shielding police officers in particular whenever possible. In order to even get into court, a victim of police violence or other official abuse must show that an officer knowingly violated a clearly established constitutional right as specifically applied to the facts and

that no reasonable officer would have acted that way. 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 similar cases.

- (a) **Do you think that the qualified immunity doctrine should be reined in? Has the “qualified” aspect of this doctrine ceased to have any practical meaning? Should there be rights without remedies?**

As a judicial nominee, it is not my place to grade or opine on the decisions of the Supreme Court in this context. If I am so fortunate to be confirmed, I will faithfully apply all binding precedent in the area of qualified immunity.

22. The Supreme Court, in *Carpenter v. U.S.* (2018), ruled that the Fourth Amendment generally requires the government to get a warrant to obtain geolocation information through cell-site location information. The Court, in a 5-4 opinion written by 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?**

In that case, the Supreme Court acknowledged that new technological developments can create serious concerns under the Fourth Amendment. As a judicial nominee, it would not be appropriate for me to comment on specific examples that may arise in future cases or already may be in litigation. *See* Canon 3 of the Code of Conduct for United States Judges.

23. Earlier this year, President Trump declared a national emergency in order to redirect funding toward the proposed border wall after Congress appropriated less money than requested for that purpose. This raised serious separation-of-powers concerns because the Executive Branch bypassed the congressional approval generally needed for appropriations. As a member of the Appropriations Committee, I take seriously Congress’s constitutional duty to decide how the government spends money.

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

I have not researched this area of the law and have not considered it. As a judicial nominee, it would not be appropriate for me to comment on issues that may arise in future cases or are now in litigation. *See* Canon 3 of the Code of Conduct for United States Judges.

24. During Justice Kavanaugh’s confirmation hearing, he used partisan language to align himself with Senate Republicans. For instance, he accused Senate Democrats of exacting “revenge on behalf of the Clintons” and warned that “what goes around comes around.” The judiciary often considers questions that have a profound impact on different political groups. The Framers sought to address the potential danger of politically-minded judges making these decisions by including constitutional protections such as judicial appointments and life terms for Article III judges.

**(a) Do you agree that the Constitution contemplates an independent judiciary? Can you discuss the importance of judges being free from political influence?**

Yes. Independent and impartial courts and judges therein must be free from political influence for justice to be served to all. Article III of the Constitution allows for the protection of that judicial independence. I strongly believe that an independent judiciary is a cornerstone pillar of our constitutional system and the promotion of the rule of law in our republic.

**Nomination of Robert Austin Huffaker, Jr.  
to the United States District Court for the  
Middle District of Alabama  
Questions for the Record  
Submitted August 7, 2019**

**QUESTIONS FROM SENATOR WHITEHOUSE**

1. A Washington Post report from May 21, 2019 (“A conservative activist’s behind-the-scenes campaign to remake the nation’s courts”) documented that Federalist Society Executive Vice President Leonard Leo raised \$250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven’t already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.

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

In response to your request, 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 district court nominee, it is inappropriate for me to comment pursuant to Canons 2 and 5 of the Code of Conduct for United States Judges.

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

Please see my response to Question 1.b.

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

No.

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

Please see my response to Question 1.b.

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?

In general, yes. The role of an umpire and the role of a judge are very similar. You must follow the established rules, be fair to all, and do your best.

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

A lower court judge must follow precedent and should not consider the practical consequences unless directed by precedent to do so.

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?

The Supreme Court in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), has made clear that summary judgment determinations are objective, not subjective.

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?

I have always tried to live my life with compassion, conscience, and competence. With that said, as a judge, I must follow the rule of law.

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

Every judge has personal life experiences that he or she brings to the job that make him or her unique, but his or her personal views have no place in judicial decision making.

5. 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.

6. When, if ever, is it appropriate for a district judge to publish an opinion that includes dicta challenging the correctness of a binding precedent?

As a nominee to an inferior federal court, my duty, if confirmed, would be to apply all relevant statutes, regulations, and precedents of the Supreme Court and the United States Court of Appeals for the Eleventh Circuit.

7. When, if ever, is it appropriate for a district judge to publish an opinion that includes a proclamation of the judge's personal policy preferences or political beliefs?

As a nominee to an inferior federal court, my duty, if confirmed, would be to apply all relevant statutes, regulations, and precedents of the Supreme Court and the United States Court of Appeals for the Eleventh Circuit and not to interject personal policy preferences or political beliefs into the decisions I make.

8. 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?

It is critical to our constitutional system, in my view.

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

Because there is active or impending litigation concerning these issues, as a judicial nominee, it would not be appropriate for me to comment on this topic. *See* Canon 3(A)(6), Code of Conduct of United States Judges.

- 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 8.b.

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

I will faithfully follow all Supreme Court and Eleventh Circuit precedent in this area of deference to congressional fact finding and recognize the importance of the doctrine of separation of powers.

10. The Federal Judiciary's Committee on the Codes of Conduct recently issued "Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates." I request that before you complete these questions you review that Advisory Opinion.

- a. Have you read Advisory Opinion #116?

Yes.

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

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



I will comply with the Code of Conduct for United States Judges and will consider any and all relevant advisory opinions relating to my attendance at education seminars I may be invited to attend.

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

Please see my response to Question 10(b)(i).

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

Please see my response to Question 10(b)(i).

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

Please see my response to Question 10(b)(i).

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

Please see my response to Question 10(b)(i).

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

Please see my response to Question 10(b)(i).

**Robert Austin Huffaker, Jr.**  
**Nominee to the United States District Court for the Middle District of Alabama**  
**Questions for the Record**  
**Submitted August 7, 2019**

**QUESTIONS FROM SENATOR BOOKER**

1. In your Questionnaire, you stated that “0%” of your practice has been in criminal proceedings.

- a. A significant portion of a district court judge’s responsibilities involve presiding over criminal proceedings. Given your lack of experience in this area, why are you qualified to preside over criminal proceedings?

The ABA recently notified me that it unanimously had concluded that I was “well qualified” to serve as a United States District Judge. In addition, I will approach criminal proceedings in the same manner in which I approach civil proceedings in unfamiliar areas of the law. Further, I will read cases and consult the other judges in the Middle District of Alabama and elsewhere, and I will utilize the voluminous materials available to district judges to educate myself about these issues. Finally, after I was nominated, I reached out to the judges of the Middle District of Alabama and have begun shadowing the judges in their criminal proceedings.

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

I tend not to label myself in light of the different meanings that people may ascribe to the term “originalist.” As an inferior court judge, my first and foremost obligation is to follow and apply binding precedent. In this context, the Supreme Court has considered the original public meaning of constitutional provisions when construing them. *See, e.g., Crawford v. Washington*, 541 U.S. 36 (2004). Ultimately, however, lower court judges must follow the precedents of the Supreme Court. Lower court judges must follow Supreme Court precedent regardless of whether a given precedent is or is not regarded as “originalist” in approach.

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

I tend not to label myself because the term “textualist” may mean different things to different people. As an inferior court judge, my first and foremost obligation is to follow binding precedent on the meaning of any statutory term. Beyond that, the Supreme Court has held the starting point for statutory interpretation is the text of the statute. If the meaning of the text is unambiguous, the inquiry ends.

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

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

The Supreme Court generally has instructed that judges may under certain limited circumstances consider legislative history when a statute is ambiguous, but that where a statute is unambiguous, resort to legislative history is not necessary. *See, e.g., Milner v. Dep't of Navy*, 562 U.S. 562, 574 (2011); *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). I will faithfully apply Supreme Court and other applicable precedent on the use of legislative history and, where appropriate, will carefully consider any arguments that parties may advance using legislative history.

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

Please see my response to Question 4.a.

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

I view judicial restraint as the opposite of judicial activism, and yes, as defined, I believe that judicial restraint is an important value for all judges to possess. Judicial restraint is a central feature of the rule of law and reflects the notion that judges must follow the law, rather than make the law. Judges demonstrate judicial restraint by addressing the issues before them through an impartial application of the law, regardless of their personal views.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.<sup>1</sup> Was that decision guided by the principle of judicial restraint?

The decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), is binding Supreme Court precedent. I will apply this precedent and all other precedents of the Supreme Court. As a judicial nominee, it would not be appropriate for me to opine as to whether the decision in *Heller* was correct.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>2</sup> Was that decision guided by the principle of judicial restraint?

The decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), is binding Supreme Court precedent. I will apply this precedent and all other precedents of the Supreme Court. As a judicial nominee, it would not be appropriate for me to opine as to whether the decision in *Citizens United* was correct.

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>3</sup> Was that decision guided by the principle of judicial restraint?

The decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), is binding Supreme Court precedent. I will apply this precedent and all other precedents of the Supreme Court. As a judicial nominee, it would not be appropriate for me to opine as to whether the decision in *Shelby County* was correct.

6. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.<sup>4</sup> In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.<sup>5</sup>

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

I have not studied this issue in depth. Because there may be litigation implicating this issue, as a judicial nominee it would not be appropriate for me to opine on this issue. See Canons 2, 3 and 5, Code of Conduct for United States Judges.

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

Please see my response to Question 6.a.

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

Please see my response to Question 6.a.

---

<sup>1</sup> 554 U.S. 570 (2008).

<sup>2</sup> 558 U.S. 310 (2010).

7. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>6</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>7</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>8</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>9</sup>

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

I have not studied this issue in depth, but I am aware there is a body of research which asserts this is the case. This should be a serious concern to everyone. Judges must do what they can to guard against the intrusion of racial bias into our justice system.

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

I am generally aware of data indicating that persons of color are disproportionately represented in our country's prisons.

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

I have not studied this issue specifically, but I generally recall having read articles in newspapers on this topic. I cannot recall the specific materials I have read.

---

<sup>3</sup> 570 U.S. 529 (2013).

<sup>4</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>5</sup> *Id.*

<sup>6</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>. <sup>7</sup> *Id.*

<sup>8</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>9</sup> *Id.*

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.<sup>10</sup> Why do you think that is the case?

I have not studied this issue specifically, but my understanding is that the reason for these disparities is a matter of ongoing dialogue. Regardless, these disparities should be a serious concern to everyone.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.<sup>11</sup> Why do you think that is the case?

Please see my response to Question 7(d).

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

Judges must do what they can to ensure that implicit racial bias does not intrude upon the criminal justice system and the impartial application of the law. I support continued study of these issues by the federal judicial system and others, which may allow for a greater understanding of the issues and how best to address them. In addition to ensuring the correctness of the sentencing guidelines range and the rulings on any departures, appellate judges can review the record to ensure a meaningful evaluation of statutory factors, *see* 18 U.S.C. § 3553(a), that consider the individual circumstances of the defendant to ensure that the sentence is “sufficient, but not greater than necessary.”

8. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>12</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>13</sup>

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

I have not studied this issue sufficiently to be able to offer an informed view 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.

Please see my response to Question 8.a.

9. 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.

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

Yes.

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

Yes, it was. I do not believe that, under the Code of Conduct for United States Judges, it generally is appropriate for me as a judicial nominee to opine on the correctness of binding precedent. However, *Brown v. Board of Education* is an exception.

12. Do you believe that *Plessy v. Ferguson*<sup>15</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No, it was not.

13. 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.

---

<sup>10</sup> 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](https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

<sup>11</sup> Sonja B. Starr & M. Marit Rehani, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

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

<sup>13</sup> *Id.*

<sup>14</sup> 347 U.S. 483 (1954).

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

Under Canons 2, 3 and 5 of the Code of Conduct for United States Judges, I do not believe it is appropriate for me as a judicial nominee to comment on a statement made by a political figure. If I am confirmed, I will follow all binding precedent related issues.

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

Under Canons 2, 3 and 5 of the Code of Judicial Conduct for United States Judges, I do not believe it is appropriate for me as a judicial nominee to comment on a statement made by a political figure. If I am confirmed, I will follow all binding precedent related issues.

---

<sup>15</sup> 163 U.S. 537 (1896).

<sup>16</sup> Brent Kendall, *Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict,’* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

<sup>17</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.



**Questions for the Record from Senator Kamala D. Harris  
Submitted August 7, 2019  
For the Nomination of**

**R. Austin Huffaker, Jr., to the U.S. District Court for the Middle District of Alabama**

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?**

Consistent with the oath of office of a district court judge, I would carefully and thoroughly review the facts and appropriate law applicable to each case. I would patiently listen to all litigants involved, including any victims of crime to arrive at the appropriate sentence that is consistent with the United States Sentencing Guidelines that is “sufficient, but not greater than necessary” to be consistent with 18 U.S.C. § 3553(a).

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

Please refer to my response in Question 1(a) above.

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

After carefully and thoroughly reviewing all relevant information presented in each case, I would follow the factors pursuant to 18 U.S.C. § 3353(a) to determine if a departure is appropriate and justified.

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

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

I am not familiar with Judge Reeves’ views in this regard.

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

It appears this question may cause me to opine on the policy matters regarding mandatory minimum sentences addressed by Congress. As such,

---

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

it would not be appropriate for me to comment pursuant to Canons 2, 3 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.**

Please see my response to Question 1(d)ii.

- iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.<sup>1</sup> **If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

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

I am not familiar with Judge Gleeson's opinion in this regard. If I am so fortunate to be confirmed, I will evaluate each case independently and act consistent with my ethical obligations, my oath of office previously mentioned, and the rule of law.

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

The prosecution of cases is under the authority of the Department of Justice within the Executive Branch. As such, the doctrine of separation of powers requires respect in this regard. However, I would address any sentencing consistent with my ethical obligation under the Canons.

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

As stated above, the doctrine of separation of powers is very important and must be given the necessary respect in this context.

- 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.

---

<sup>1</sup> See, e.g., "Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose," NY Times, July 28, 2014, <https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>

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. It is core pillar of our judicial system.

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

Yes. I understand there is data that indicates higher rates of incarceration for persons of color. If I am so fortunate to be confirmed, I will treat all parties before me with equality, respect, and fairness. Consistent with my oath of office, I will administer justice without bias or prejudice.

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?**

If confirmed, I would commit to ensuring that all qualified applicants, including qualified women and minority candidates, are given serious consideration for any position in which I am responsible for hiring.