

**Nomination of Anna M. Manasco to the United States District Court for the  
Northern District of Alabama  
Questions for the Record  
Submitted February 19, 2020**

**QUESTIONS FROM SENATOR FEINSTEIN**

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

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

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?**

Ordinarily it is improper for a district judge to question Supreme Court precedent, including in the relatively rare circumstance that the district judge has an opportunity to prepare a concurring or dissenting opinion. District judges should instead apply controlling precedent dispassionately. But under limited circumstances, it may be appropriate for a district judge to question Supreme Court precedents. For example, if the applicability of the precedent to the particular set of facts before the district judge is unclear, and the district judge concurs or dissents on the ground that the precedent should not apply to those facts, it may be helpful to the future development of the law for the district judge to identify the gaps in the precedent that form the basis for the district judge's analysis.

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

A district court is not bound by decisions of another district court, which are not controlling precedent. The question whether a district court may reconsider and/or overturn its own prior rulings is controlled by Federal Rules of Civil Procedure 59 and 60 as well as various preclusion doctrines, including the law-of-the-case doctrine.

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

Only the Supreme Court of the United States may overturn its own precedent. Accordingly, it would be improper for a nominee to a federal district court to comment on how the Supreme Court should or does exercise that authority.

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* is binding precedent, and if I am fortunate enough to be confirmed, I will faithfully apply it.

**b. Is it settled law?**

All binding precedents of the Supreme Court of the United States are settled law, so yes.

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?**

All binding precedents of the Supreme Court of the United States are settled law, so yes.

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

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

It would be improper for a nominee to a district court to comment on the correctness of opinions of the Supreme Court or individual Supreme Court justices. If I am confirmed, I will faithfully apply the opinion of the Court in *Heller*, which is controlling precedent.

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

It would be improper for a nominee to a district court to comment on this issue, which may be the subject of pending or impending litigation in the district court. See Canon 3(A)(6) of the Code of Conduct for United States Judges.

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

As previously explained, because only the Supreme Court of the United States may overturn its own precedent, it would be improper for a nominee to a federal district court to comment on how the Supreme Court exercises that authority.

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

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

In *Citizens United*, the Supreme Court rejected the assertion that the political speech of corporations should be treated differently under the First Amendment from the political speech of natural persons. That decision is controlling precedent, and I will faithfully apply it if I am confirmed.

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

Please see my response to Question 5.a.

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

It would be improper for a nominee to a district court to comment on this issue, which may be the subject of pending or impending litigation in the district court. *See* Canon 3(A)(6) of the Code of Conduct for United States Judges.

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

This question is the subject of pending and impending litigation in federal courts. It also has been debated and discussed by Congress. Accordingly, it would be inappropriate for me to comment on it. *See* Canons 2(A), 3(A)(6), and 5(C) of the Code of Conduct for United States Judges.

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

The Supreme Court held unanimously many years ago (in *Loving v. Virginia*, 388 U.S. 1 (1967)) that (1) the freedom to marry is a fundamental right that may not be deprived on the

basis of race and (2) state laws prohibiting interracial marriage violate the Equal Protection Clause of the Fourteenth Amendment. Further, various federal laws, including but not limited to 42 U.S.C. § 1981, have for many years prohibited discrimination on the basis of race under color of State law.

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

Please refer to my answer to question 7 above. Additionally, various federal laws, including but not limited to 42 U.S.C. § 1981, have for many years prohibited discrimination on the basis of race in nongovernmental commercial transactions.

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

No.

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

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

No.

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

No.

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

If I am confirmed, I will apply all binding precedents of the Supreme Court and the Eleventh Circuit concerning administrative law, as well as all applicable statutes and regulations.

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

It would be improper for a nominee to a district court to comment on this issue, which may be the subject of pending or impending litigation in the district court. *See* Canon 3(A)(6) of the Code of Conduct for United States Judges.

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

When controlling federal appellate and Supreme Court precedents direct a district judge to consider legislative history in construing a statute, it is appropriate for a district judge to do so.

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

No.

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

I received these questions on Wednesday, February 19, 2020. I reviewed them and prepared draft responses, which I sent to attorneys at the Office of Legal Policy at the Department of Justice. After I reviewed comments that I received, I prepared a final draft of my answers and authorized personnel at the Department of Justice to file it.

**Written Questions for Anna Monasco  
Submitted by Senator Patrick Leahy  
February 19, 2020**

1. You were a law clerk to Judge Pryor on the Eleventh Circuit. **How did clerking for Judge Pryor shape your judicial philosophy? Please be as specific as possible.**

Federal judges should apply the law as it is written to the facts as they are established by the evidence without regard for whether the judge personally agrees or disagrees with the result. They also should apply controlling precedents of the Supreme Court and applicable federal appellate court dispassionately. Clerking for Judge Pryor afforded me the opportunity to observe and learn from a federal judge performing his duty in this manner with distinction.

2. In 2015, you co-authored an article about *Alabama Black Caucus v. Alabama*, in which the Supreme Court considered whether Alabama's 2012 redistricting plan constituted gerrymandering in violation of the Fourteenth Amendment. In that article, you mentioned that Justice Thomas dissented from the majority opinion "to reiterate his long-standing concerns about the Court's Voting Rights Act jurisprudence, which in his view 'is nothing more than a fight over the best racial quota.'"

- a. **Do you share Justice Thomas' opinion of the Voting Rights Act jurisprudence?**

If confirmed, I will faithfully apply the Supreme Court's decision in *Alabama Black Caucus* as well as all other Supreme Court precedents. Justice Thomas's dissent was not adopted by the Court in *Alabama Black Caucus*. It is improper for a district judge or nominee to comment on the correctness of particular statements or writings by Supreme Court justices, such as Justice Thomas's statement in the dissent that is referenced in this question.

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?'"**

**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?**

The quotation that is referenced in this question appears in the opinion of the Court in *King*. Accordingly, it is binding precedent, and I will adhere to it as I will all precedents of the Supreme Court.

4. 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?**

As a nominee to serve on a federal district court, it would be improper for me to comment on political rhetoric from an elected official. *See* Canon 5(C) of the Code of Conduct for United States Judges.

- (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?**

As a nominee to serve on a federal district court, it would be improper for me to comment on potential political rhetoric from an elected official. *See* Canon 5(C) of the Code of Conduct for United States Judges.

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?**

The scope of various constitutional provisions and their application to judicial review of national security decisions is the subject of pending or impending litigation in federal courts. Accordingly, it would be improper for me to comment. *See* Canon 3(A)(6) of the Code of Conduct for United States Judges.

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. 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?**

Various provisions help to ensure that district judges are empowered to ensure compliance with lawful orders issued in litigation. To the extent that the Question calls for comment on a scenario that is or may become the subject of litigation, it would not be appropriate for me to comment further. *See* Canons 2(A), 3(A)(6), and 5(C) 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?**

*Hamdan* is a controlling precedent of the Supreme Court that recognized constitutional limitations on the power of a President. I will apply it faithfully if I am confirmed, as I will all other Supreme Court precedents.

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?**

In attempting to effect a judicial balancing of these powers, the Supreme Court has explained that the President's "authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) identified three categories of presidential power. In the first category, when "the President acts pursuant to an express or implied authorization of Congress," his "authority is at its maximum." *Id.* at 636. In the second category, "[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers." *Id.* Finally, in the third category, the President acts contrary to the express or implied will of Congress. It is here that the President's "power is at its lowest ebb." *Id.* at 637-38.

- 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?**

If a federal district judge is called upon to balance the President's expertise in national security matters with the judicial branch's constitutional duty to prevent abuse of power, the district judge should apply controlling precedents of the Supreme Court. Exactly how the balance is struck in any given case is a fact-specific determination made pursuant to the controlling legal standards.

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 held that state practices discriminating on the basis of sex are subject to a heightened level of scrutiny under the Equal Protection Clause. This scrutiny is often referred to as “intermediate scrutiny.” In *United States v. Virginia*, 518 U.S. 515 (1996), the Court emphasized that heightened scrutiny requires an “exceedingly persuasive justification” for sex-based classification.

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

As a judicial nominee, it would be improper for me to comment on the statements of particular Supreme Court justices. The Voting Rights Act is a federal statute that is the subject of numerous Supreme Court and Eleventh Circuit precedents. If I am confirmed, I will faithfully follow and apply those precedents.

**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, Clause 8 of the United States Constitution states: “No Title of Nobility shall be granted by the United States: And no Person holding any office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind 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 the Supreme Court to substitute its own factual findings for those made by Congress or the lower courts?**

It would be improper for me to comment on how the Supreme Court approaches or decides the cases before it.

**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 scope of congressional authority in connection with the Thirteenth, Fourteenth, and Fifteenth Amendments is the subject of numerous Supreme Court precedents, all of which I will faithfully follow and apply if I am confirmed. It would be improper for me

as a federal judicial nominee to substitute my own description of Congress's authority for the extensive analysis of the Supreme Court.

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?**

If I am confirmed I will faithfully apply *Lawrence*, as I will all Supreme Court precedents. The Constitution explicitly protects several rights relating to personal autonomy and privacy, including rights enumerated in the First, Third, Fourth, and Fourteenth Amendments.

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?**

Numerous precedents of the Supreme Court explain and affirm the importance of the doctrine of stare decisis. Federal district courts are bound to apply all precedents of their federal appellate court and the Supreme Court of the United States. They are without power to deviate from those precedents. Only the Eleventh Circuit sitting en banc or the Supreme Court may overrule prior panel precedents of the Eleventh Circuit, and only the Supreme Court may overrule its own prior precedents. It would be improper for me as a nominee to a federal district court to comment on how the Eleventh Circuit sitting en banc or Supreme Court should view the doctrine of stare decisis.

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.**

As I explained in my Senate Judiciary Committee questionnaire, I will recuse myself in any case in which I have ever played a role. For a period of time, I will recuse from any case where my current law firm represents a party. For the duration of my service on the Board of Trustees of Children's of Alabama and a period of time thereafter, I also will recuse myself from cases in which Children's of Alabama is a party. Of course, I also will follow applicable law and judicial canons and recuse myself in any case where the law requires. In addition, as necessary, I would consult with judicial ethics officials and, as appropriate, colleagues within the judicial system.

17. 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?**

If I am confirmed, I will follow and apply *Carolene Products* as fully and faithfully as I will any other binding Supreme Court precedent. It would be improper for me as a federal judicial nominee to assign a relative weight or importance to a particular footnote or otherwise to comment on it.

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 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?**

Congress's oversight powers arise from numerous congressional powers enumerated in Article I of the United States Constitution, and the Supreme Court has affirmed Congress's oversight powers (*see, e.g., McGrain v. Daugherty*, 273 U.S. 135, 177 (1927)).

19. **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?**

It would be improper for me as a federal judicial nominee to comment on any public statements of an elected official about the scope of his or her constitutional authority. *See* Canon 5(C) 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?**

Numerous Supreme Court precedents set forth the scope of congressional power under the Commerce Clause and Section 5 of the Fourteenth Amendment. If I am confirmed, I will faithfully apply and follow those precedents.

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? 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?**

It would be improper for me as a federal judicial nominee to comment on any particular Supreme Court precedent or opinion; I will faithfully apply and follow all of them. Additionally, because the subject of this question is or will be the subject of pending or impending litigation in federal courts, it would be improper for me to comment on it. *See* Canon 3(A)(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.**

If I am fortunate enough to be confirmed, I will faithfully apply the Supreme Court’s decision in *Casey* and related cases, as I will all Supreme Court precedents. Because the

application of *Casey* to particular fact patterns is the subject of pending or impending litigation in federal courts, it would be improper for me to identify specific examples of what would or would not be an undue burden.

23. 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?**

If I am confirmed, I will apply all Supreme Court and Eleventh Circuit precedents concerning the qualified immunity doctrine. As a federal judicial nominee, it would be improper for me to comment on whether I agree or disagree with any of those precedents. I am generally aware of academic and political debate as to the proper or desirable scope of the qualified immunity doctrine, and it would be improper for me to comment on that discourse under Canon 5(C) of the Code of Conduct for United States Judges.

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 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?**

*Carpenter* is a recently decided binding precedent of the Supreme Court. If I am confirmed I will faithfully apply and follow it as I will all other Supreme Court precedents. As a judicial nominee it would be improper for me to comment on how a particular precedent could or should be applied in lower courts; that issue is likely to be the subject of pending or impending litigation in federal courts. *See*

Canon 3(A)(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 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 cannot answer this question without implicitly commenting on a pending or impending case. Accordingly, I cannot answer it under Canon 3(A)(6) of the Code of Conduct for United States Judges.

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

Judges are ethically bound to be free from political influence or the appearance thereof by numerous judicial canons. *See, e.g.*, Canons 2(A) and 5(C) of the Code of Conduct for United States Judges. Additionally, judges are subject to a moral imperative to decide cases free from bias, prejudice, or political influence or preference. The maintenance of an independent judiciary is critically important to our system of government.

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

For questions with subparts, please answer each subpart separately.

**Questions for Anna Marie Manasco**

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

Only the Supreme Court of the United States may overturn its own precedent. Accordingly, it would be improper for a nominee to a federal district court to comment on how the Supreme Court should or does exercise that authority.

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

Ordinarily it is improper for a district judge to question Supreme Court precedent, including in the relatively rare circumstance that the district judge has an opportunity to prepare a concurring or dissenting opinion. District judges should instead apply controlling precedent dispassionately. But under limited circumstances, it may be appropriate for a district judge to question Supreme Court precedents. For example, if the applicability of the precedent to the particular set of facts before the district judge is unclear, and the district judge concurs or dissents on the ground that the precedent should not apply to those facts, it may be helpful to the future development of the law for the district judge to identify the gaps in the precedent that form the basis for the district judge's analysis.

3. You say in your questionnaire that you “have not tried any cases in state or federal court to verdict, judgment, or final decision” but that you have worked on more than 50 cases in the pretrial or trial phase and “[a]ll of the cases that I have worked on during the pretrial and trial phase of litigation in state or federal courts have either resolved on dispositive motions or settled before or during trial.”

- a. **How many cases have you worked on in which a trial began but then the parties settled during trial?**

I have worked on one case in which a jury trial began, but then the parties settled during trial. I have worked on numerous other cases that the parties settled either immediately before or during voir dire, or immediately before a bench trial was to begin.

**b. What steps of a trial have you participated in before the case ended up settling?**

I have prepared and/or assisted in the preparation of pretrial motions and briefs, written and oral voir dire questions, opening statements, trial motions and briefs (on evidentiary issues as well as motions for judgment as a matter of law), offers of proof, witness examination outlines, jury charges, and verdict forms. Additionally, I have prepared and/or assisted in the preparation of interlocutory appellate motions and briefs.

4.

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

As a federal judicial nominee, it would be improper for me to comment on the fundraising or spending activities of any political organization. *See* Canon 5(C) of the Code of Conduct for United States Judges.

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

Please refer to my response to question 4.a. Additionally, if I am confirmed I will follow all Supreme Court and Eleventh Circuit precedents, federal statutes, and ethical rules relating to recusal.

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

Please refer to my response to question 4.a.

5.

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

If I am confirmed, I will faithfully follow all Supreme Court and Eleventh Circuit precedents with respect to the use of the original public meaning of constitutional provisions to interpret those provisions.

**b. If so, do you believe that courts should adhere to the original public meaning of the Foreign Emoluments Clause when interpreting and applying the Clause today? To the extent you may be unfamiliar with the Foreign Emoluments Clause in**

Article I, Section 9, Clause 8, of the Constitution, please familiarize yourself with the Clause before answering. The Clause provides that:

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

Please refer to my response to question 5.a.

6.

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

If I am confirmed, I will faithfully follow all Supreme Court and Eleventh Circuit precedents with respect to the President's pardon authority under the United States Constitution. Otherwise, as a judicial nominee, it would not be appropriate to comment on political debates and questions that could come before the courts.

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

I have not studied the President's pardon authority generally, nor the original public meaning of that constitutional provision in particular.

**Nomination of Anna Marie Manasco  
to the United States District Court for the Northern District of Alabama  
Questions for the Record  
Submitted February 19, 2020**

**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?

Prior to preparing answers to these questions I had not read the Washington Post article mentioned in the question. I have now read it.

- 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.

I am unfamiliar with the events described in the Washington Post’s article and, to the extent the question calls for opinions on matters of policy or political debate, or on the subject of pending or impending litigation, it would be inappropriate for me to comment further. *See* Canons 1, 2(A), 3(A)(6), and 5(C) 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 refer to my answer to question 3(b) above.

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

No.

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

Please refer to my answer to Question 3(b) above.

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?

As I understand it, Chief Justice Roberts’ metaphor correctly captures the role of the judge to apply the law to the facts without favor or bias.

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

Controlling precedents of the Supreme Court and Eleventh Circuit, as well as federal statutes, dictate when a federal judge in Alabama should consider the practical consequences of a particular ruling. For example, federal judges may consider in ruling on a request for preliminary injunctive relief whether granting the relief requested is necessary to prevent immediate, irreparable harm to the party seeking that relief. If I am confirmed I will faithfully apply all such precedents.

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. There is a well-settled body of binding precedents from the Supreme Court and Eleventh Circuit that provide clear instruction as to when, objectively, there is a genuine dispute of material fact that precludes summary judgment. If I am confirmed, I will faithfully follow those precedents.

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?

Empathy plays an important role in how judges treat litigants and attorneys who appear before the court. Judges, litigants, and counsel all benefit from a judge who treats everyone in the courtroom with respect and works diligently to have a full understanding of the arguments, positions, and disputes before the court.

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

Personal life experiences are not a substitute for a judge’s sworn duty to administer justice without respect to persons, to do equal right to the poor and to the rich, and to faithfully and impartially discharge and perform all the duties incumbent upon the judge under the Constitution and laws of the United States.

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?

Federal district courts are inferior to federal appellate courts and the Supreme Court. Accordingly, it is not appropriate for a federal district court ever to refuse to follow (or to contravene) an order from its federal appellate court or the Supreme Court.

6. 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 right to a trial by jury in certain cases is constitutionally enshrined in the Seventh Amendment.

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

The interplay between the Seventh Amendment and the Federal Arbitration Act is the subject of impending or pending litigation in federal courts, and the scope of statutorily protected arbitration rights is (at least in part) a political question that is debated in Congress in connection with federal arbitration statutes. Accordingly, it would be improper for me to comment on questions 6.b and 6.c. *See* Canons 2(A), 3(A)(6) and 5(C) of the Code of Conduct for 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 refer to my answer to Question 6(b) above.

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

Whatever deference is required by controlling precedents of the Supreme Court and Eleventh Circuit, which depends on the particularities of the legislation and the individual rights that it expands or limits.

8. 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 have read Advisory Opinion 116, which sets forth a non-exhaustive list of factors that judges should consider when deciding whether to attend a particular educational seminar or conference.

- 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.

Advisory Opinion 116 states that such decisions should be undertaken on a case-by-case basis. Additionally, numerous canons of the Code of Conduct for United States Judges apply to a judge's decision whether to attend a particular educational seminar or conference. *See, e.g.*, Canon 4. I commit to consider each and every seminar that I attend carefully and to apply the standards and considerations set forth in the applicable canons as well as Advisory Opinion 116.

- 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 refer to my answer to Question 8(b) above.

**Nomination of Anna M. Manasco, to be United States District Court Judge  
for the Northern District of Alabama  
Questions for the Record  
Submitted February 19, 2020**

**QUESTIONS FROM SENATOR COONS**

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

There is an extensive and well-developed body of Supreme Court precedents that address this question, including *Washington v. Glucksberg*, 521 U.S. 702 (1997) and its progeny. I would faithfully apply those and all applicable Supreme Court and Eleventh Circuit precedents, if I am confirmed.

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

Yes. The Supreme Court has said that whether the right is expressly enumerated is relevant for purposes of applying the incorporation doctrine under the Fourteenth Amendment (*see McDonald v. City of Chicago*, 561 U.S. 742 (2010)), and I would faithfully apply that precedent.

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

Yes, as required in *Washington v. Glucksberg*, 521 U.S. 702 (1997), its progeny, as well as related precedents of the Eleventh Circuit, if I am confirmed. Accordingly, I certainly would consider whether the right has previously been recognized by Supreme Court or circuit precedent. In general, *Glucksberg* recognizes that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed." 521 U.S. at 720-21 (internal citations omitted).

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

Please refer to my answer to 1(b) above.

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

Please refer to my answer to 1(b) above.

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

Please refer to my answer to 1(b) above.

- f. What other factors would you consider?

Please refer to my answer to 1(b) above.

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

The Supreme Court held in 1996 that the Fourteenth Amendment applies to both race and gender. See *United States v. Virginia*, 518 U.S. 515 (1996). Additionally, the Supreme Court held in *Obergefell* that the Fourteenth Amendment protects the right of gay and lesbian couples to marry “on the same terms accorded to couples of the opposite sex.” 135 S. Ct. 2584, 2605 (2015). If I am confirmed I would faithfully apply and follow these and other binding precedents.

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

Please refer to my answer to 2 above.

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

Please refer to my answer to 2 above.

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

Please refer to my answer to 2 above.

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

This relates to a case that is currently pending in the Supreme Court. Accordingly, under Canon 3(A)(6) of the Code of Conduct for United States Judges, it would be improper for me to comment on it.

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

The Supreme Court has held that the right to use contraceptives is constitutionally protected. *See Griswold v. Connecticut*, 381 U.S. 479 (1965).

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

Likewise, the Supreme Court has held that there is a constitutional right to privacy that protects a woman's right to obtain an abortion. *See Roe v. Wade*, 410 U.S. 113 (1973).

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

Likewise, the Supreme Court has held that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders. *See Lawrence v. Texas*, 539 U.S. 558 (2003).

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

Please refer to my answers to Questions 3, 3(a), and 3(b) above.

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

It is appropriate for federal district courts to consider evidence that sheds light on our changing understanding of society when Supreme Court precedents direct lower courts to

consider such evidence. If I am confirmed, I will follow and faithfully apply *Virginia*, *Obergefell*, and all other Supreme Court precedents on this issue.

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

If confirmed, I will faithfully follow all Supreme Court and Eleventh Circuit precedent on the role of sociology, scientific evidence, and data in judicial analysis.

5. In the Supreme Court's *bergefell* opinion, Justice Kennedy explained, "If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians."
- a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

The Supreme Court has answered this question directly. It has held that same-sex couples have a right of privacy, *Lawrence v. Texas*, 539 U.S. 558 (2003), and a right to marry, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). Additionally, it has recognized that "[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth," *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Commission*, 138 S. Ct. 1719, 1727 (2018). If I am confirmed, I will faithfully follow and apply all of these precedents.

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

Please refer to my answer to question 5(a) above.

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

This is an academic question that I have not studied closely, and I am not familiar with the research that is cited in the question. I have testified unequivocally that *Brown* was correctly decided.

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ or ‘equal protection,’ or ‘due process of law’ are not precise or self-defining”? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism> (last visited Feb. 19, 2020).

Please refer to my answer to Question 6(a) above.

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

I also have testified that I will follow and apply all Supreme Court and Eleventh Circuit precedents concerning the public’s original understanding of the scope of a constitutional provision. If I am called upon to discern the contours of a constitutional provision, I will look to binding precedents of the Supreme Court and Eleventh Circuit for guidance and instruction.

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

Please refer to my answer to Question 6(c) above.

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

If I am called upon to discern the contours of a constitutional provision, I will look to binding precedents of the Supreme Court and Eleventh Circuit for guidance and instruction.

7. Since you began practicing law in 2009:

- a. What motions have you argued under the Federal Rules of Civil Procedure?
- b. What motions have you argued under the Federal Rules of Criminal Procedure?
- c. Have you presented argument in a federal court on an evidentiary issue governed by the Federal Rules of Evidence?
- d. Have you taken a deposition in a federal court proceeding?
- e. Have you defended a deposition in a federal court proceeding?
- f. Have you argued a discovery motion in federal court?
- g. Have you argued a motion in limine in federal court?
- h. Have you participated in a federal court mediation?
- i. Have you participated in a pre-trial conference in federal court?
- j. Have you participated in voir dire in federal court?
- k. Have you examined a fact witness in federal court?
- l. Have you examined an expert witness in federal court?
- m. Have you tried a case in state or federal court?

Since I began practicing law in 2009, all of my oral arguments have been in state courts. I have not taken a deposition, examined a witness, or participated in voir dire in a federal court proceeding. I have participated in a federal court mediation. I have prepared numerous motions and briefs in federal district court cases. I have participated in a trial in state court, but none of the cases that I have worked on in the pretrial phase in federal district court actually proceeded to trial.

**Questions for the Record for Anna Marie Manasco  
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.

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

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

Yes.

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

No.

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

My understanding is that implicit bias training is provided as a matter of course to new federal judges by the Federal Judicial Center, and I look forward to having the opportunity to attend that training.

3. You have been a member of the Defense Research Institute since 2009. According to its website, the Defense Research Institute seeks to “defend[] the interests of business and individuals in civil litigation.” In the 2011, you filed a Supreme Court amicus brief on behalf of the Defense Research Institute in support of the Philip Morris company. In the brief, you argued against the class certification of certain smokers in Louisiana. You also warned of the risk of “blackmail settlements” to demand more rigorous application of requirements for certifying class actions.

**a. How do you weigh the risk of what you call “blackmail settlements” with the risk that limiting class actions will prevent consumers from obtaining remedies from powerful corporations?**

These competing risks are the subject of pending and impending litigation in federal district courts. Accordingly, it would be improper for me to comment on them in connection with my nomination to serve as a federal district judge. *See* Canon 3(A)(6) of the Code of Conduct for United States Judges.

**b. What other actions have you taken as a member of the Defense Research Institute to “defend[] the interests of business and individuals in civil litigation”?**

The amicus brief referred to in question 3 is the only brief I have prepared on behalf of the Defense Research Institute. I have never attended a conference or served on a committee of the Defense Research Institute.

4. In 2010, you published a book that analyzed the effect of women representatives in British Parliament. You observed that “[w]ithout diminishing the significance of women’s presence, the data do not imply that women monopolized parliamentary attention to women’s issues.” You argued it may be “unhelpful” to argue that women officials would help improve attention to “women’s issues” when advocating to elect more women into public office.

**Given your study, in your view, what would improve attention to what you call, “women’s issues”?**

This question is a difficult and important one that is debated and discussed not only in Congress, but also in other legislatures and political environments in our country. Accordingly, it would be improper for me as a federal judicial nominee to comment on it. *See* Canon 5(C) of the Code of Conduct for United States Judges.

5. When the Supreme Court issued its decision in *Alabama Black Caucus v. Alabama*, you described it as an “important opinion in the field of voting rights jurisprudence.” In that case, the Supreme Court clarified the standard for determining racial gerrymandering claims.

**a. In your view, what are the top three most important voting rights cases that the Supreme Court has decided in recent history?**

All voting rights precedents of the Supreme Court are binding on lower courts. Accordingly, it would be improper for me, as a judicial nominee, to assign greater importance to certain voting rights precedents than to others.

**b. In your summary of the *Alabama Black Caucus v. Alabama* decision, you observed that Justice Thomas’s dissent reiterated his longstanding view that the Supreme Court’s Voting Rights Act jurisprudence “is nothing more than a fight over the best racial quota.” Do you agree with this view?**

Justice Thomas’s dissent was not adopted by the Court in *Alabama Black Caucus*. If confirmed, I will faithfully apply the Supreme Court’s decision in *Alabama Black Caucus* as well as all other Supreme Court precedents. It would otherwise be improper for me, as a judicial nominee, to comment on the correctness of particular Supreme Court opinions, such as Justice Thomas’s statement in the dissent that is referenced in this question.

**Nomination of Anna M. Manasco**  
**United States District Court for the Northern District of Alabama**  
**Questions for the Record**  
**Submitted February 19, 2020**

**QUESTIONS FROM SENATOR BOOKER**

1. You indicated in your Questionnaire responses that you “have not tried any cases in state or federal court to verdict, judgment or final decision,” explaining that “[a]ll of the cases that [you] have worked on during the pretrial and trial phase of litigation in state or federal courts have either resolved on dispositive motions or settled before or during trial.”<sup>1</sup> You also indicated that “0%” of your experience has been in criminal proceedings.<sup>2</sup>

A significant portion of a district court judge’s responsibilities involves presiding over trials, as well as presiding over criminal proceedings. Given your lack of experience in these areas, what concrete and affirmative steps do you plan to take to try to overcome your experience gaps, if you are confirmed?

In addition to relying on my extensive experience in all stages of litigation, including during trial, I would avail myself of the extensive training and education opportunities available to federal judges, including but not limited to those made available by the Administrative Office of the Courts and the Federal Judicial Center. I will study binding precedents of the Supreme Court and the Eleventh Circuit, as well as applicable statutes, procedural rules, and authoritative treatises. I will study the parties’ arguments and evidence carefully and request additional briefing or argument if necessary. I also will consult my colleagues, law clerks, and other court personnel.

2. You have represented a number of energy companies and other organizations in cases involving various claims of harmful environmental impacts.<sup>3</sup>

If a corporation has contaminated the environment and jeopardized the public health of an American community (or plans to undertake activities with those effects), should residents of that community or their representatives be able to seek justice in our courts?

Controlling precedents and federal statutes make clear what causes of action may be available to persons who wish to assert claims such as those described in this question. If I am fortunate enough to be confirmed, I will faithfully follow and apply all such precedents and statutes.

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

I am reluctant to adopt any particular doctrinal label, because they may be used to oversimplify complex ideas or inaccurately as a shorthand for a particular political point of view. If I am confirmed, I will follow all binding precedents of the Supreme Court and the Eleventh Circuit concerning statutory interpretation, including those that rely on the original public meaning of constitutional or statutory texts to ascertain their meaning.

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

Please refer to my answer to question 3.

5. 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?

If binding precedents of the Supreme Court and/or Eleventh Circuit indicate a context in which a judge should consult legislative history in a particular case, then I certainly would do so.

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

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<sup>1</sup> SJQ at 19.

<sup>2</sup> *Id.*

<sup>3</sup> *E.g., PennEast Pipeline Co., LLC v. New Jersey*, 938 F.3d 96 (3rd Cir. 2019); *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017).

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?

It is incumbent upon a district judge to evaluate all arguments presented by the parties. If a party relies on legislative history, and the precedents of the Supreme Court and/or the Eleventh Circuit direct me to consult that legislative history to ascertain the meaning of the law at issue, then I will do so.

6. 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?

The principle of judicial restraint is important to sustain a limited, independent judiciary, which is a cornerstone of our form of government. My understanding of judicial restraint is that judges should apply the law as it is written to the facts as they are established by the evidence, without regard to whether the judge personally agrees with the result of that analysis. Additionally, my understanding of judicial restraint is that judges should not decide questions that are not necessary for the judge to decide the case or controversy before the court.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.<sup>4</sup> Was that decision guided by the principle of judicial restraint?

If I am confirmed, I will faithfully apply and follow *Heller*, which is binding Supreme Court precedent. Beyond that, it would be improper for me as a nominee to comment on *Heller* or any other particular Supreme Court precedent.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>5</sup> Was that decision guided by the principle of judicial restraint?

If I am confirmed, I will faithfully apply and follow *Citizens United*, which is binding Supreme Court precedent. Beyond that, it would be improper for me as a nominee to comment on *Citizens United* or any other particular Supreme Court precedent.

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>6</sup> Was that decision guided by the principle of judicial restraint?

If I am confirmed, I will faithfully apply and follow *Shelby County*, which is binding Supreme Court precedent. Beyond that, it would be improper for me as a nominee to comment on *Shelby County* or any other particular Supreme Court precedent.

7. 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>7</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>8</sup>

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

I am aware that the issue of in-person voter fraud has been and will continue to be debated in Congress and has been and will continue to be the subject of pending or impending litigation in federal courts. Accordingly, it would be improper for me to discuss any personal views I may have about that issue. *See* Canons 3(A)(6) and 5(C) of the 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 refer to my response to question 7.a.

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

Please refer to my response to question 7.a.

8. 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>9</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>10</sup> These

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<sup>4</sup> 554 U.S. 570 (2008).

<sup>5</sup> 558 U.S. 310 (2010).

<sup>6</sup> 570 U.S. 529 (2013).

<sup>7</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>8</sup> *Id.*

<sup>9</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>10</sup>  
*Id.*

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>11</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>12</sup>

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

I am generally aware of evidence indicating that there is implicit racial bias in our criminal justice system, but I have not studied this evidence.

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

I am generally aware of evidence indicating that people of color are disproportionately represented in our nation's jails and prisons, but I have not studied this evidence.

- 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.

Prior to my nomination I had not studied the issue of implicit racial bias in our 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.<sup>13</sup> Why do you think that is the case?

I am not familiar with this report and have not studied this issue enough to provide a more specific response. That said, equality and fairness are fundamental principles in our justice system.

- 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>14</sup> Why do you think that is the case?

I am not familiar with this academic study, but I believe that it is important that our criminal justice system be free from all forms of racial bias.

- 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?

Federal judges should be aware of the potential for racial bias and must ensure that every criminal defendant is treated fairly and impartially.

9. 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>15</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>16</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 am not familiar with this study and have not studied the academic evidence about this issue.

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<sup>11</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>12</sup> *Id.*

<sup>13</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>14</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

<sup>15</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>16</sup> *Id.*

- 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 am not familiar with this study and have not studied the academic evidence about this issue.

10. 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.

11. 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.

12. Do you believe that *Brown v. Board of Education*<sup>17</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

As I testified at the February 12, 2020 public hearing on my nomination, it is my unequivocal belief that *Brown v. Board of Education* was correctly decided, and that *Brown* occupies a unique status in American history that warrants an exception from the ordinary rule that federal judicial nominees will not comment on the correctness of particular Supreme Court precedents.

13. Do you believe that *Plessy v. Ferguson*<sup>18</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Please refer to my answer to question 12 and prior testimony. *Plessy* was wrong.

14. 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?

I have not been instructed by anyone to provide any particular answer to any question. My answers are my own. My decision to depart from the ordinary rule that nominees should not comment on particular Supreme Court precedents in order to answer the question whether *Brown* was correctly decided, was and is my own.

15. 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>19</sup> Do you agree with President Trump's view that a judge's race or ethnicity can be a basis for recusal or disqualification?

As a federal judicial nominee it would be improper for me to comment on the political statements of any elected official, including President Trump. See Canon 5(C) of the Code

of Conduct for United States Judges.

16. 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>20</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

Please refer to my answer to question 15. Additionally, the Supreme Court has held that the Due Process Clause applies to all persons in the United States (*see Zadvydas v. Davis*, 633 U.S. 678, 693 (2001)), and I would faithfully follow that precedent and other precedents of the Supreme Court and Eleventh Circuit.

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<sup>17</sup> 347 U.S. 483 (1954).

<sup>18</sup> 163 U.S. 537 (1896).

<sup>19</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>20</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

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

**Anna M. Manasco, to be United States District Judge for the Northern 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?**

I would consult all applicable precedents of the Supreme Court and the Eleventh Circuit as well as all applicable federal statutes, I would consult the sentencing guidelines and perform the required guideline calculation, I would consider the factual record in its entirety, and I would be mindful of the statutory mandate to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in” the federal sentencing statute. *See* 18 U.S.C. §3553.

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

Please refer to my response to question 1. Additionally, I would consult sentencing statistics available from the Administrative Office of the Courts and sentencing decisions of my colleagues.

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

When binding precedent and/or the Sentencing Guidelines require or allow a departure. The Sentencing Guidelines contemplate circumstances under which district courts may conclude that it is appropriate to depart from the Guidelines (see Part K of Section 5 of the Guidelines). Additionally, binding precedents of the Eleventh Circuit set forth factors that may support a sentence that departs from the Guidelines.

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

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

Congress has established mandatory minimum sentences for certain federal crimes. If confirmed, I will faithfully follow all applicable statutes and precedent. As a judicial nominee, it would not be appropriate for me

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

to comment on the correctness of mandatory minimum sentences because they are policy choices committed to the legislative branch. *See* Code of Conduct for United States Judges, Canons 2.A and 5.

- 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 refer to 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.<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?**

If confirmed and faced with these circumstances, I will carefully consider the law and facts of each case, as well as my ethical obligations, and render judgment accordingly.

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

Charging policies are determined by the Executive Branch. Judges must not encroach on that authority. If I concluded that the law compelled imposition of an unjust and disproportionate sentence because of the charging policy, then, consistent with the Judicial Canons of Ethics, I would consider raising the issue or commenting on it as part of the sentencing process or in a written Decision. Additionally, I would consider raising the issue with the U.S. Attorney only if doing so would be consistent with the applicable ethical rules, procedural rules, and applicable law.

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

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<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>.

The clemency power is reserved for the President of the United States and the Executive Branch. If confirmed as a District Court Judge, I would be bound to respect the separation of powers under our Constitution.

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

Yes, I would consider such alternatives to the extent consistent with applicable law and justified by the relevant facts.

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 that there are statistical reports showing racial disparities in our criminal justice system, such as incarceration 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?**

Yes.

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

**Anna M. Manasco**  
**Nominee, U.S. District Court for the Northern District of Alabama**

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

For lower federal courts, the role that the Supreme Court assigns. The Supreme Court has recognized the importance of the Constitution's text, structure, and original understanding in interpreting a constitutional provision. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

If confronted with a question of first impression, I would look first to the text of the statutory or constitutional provision at issue. I would also consult precedents of the Supreme Court and the Eleventh Circuit in the general area of the law of the question of first impression and follow all guidance supplied by those precedents and by any related constitutional provisions and applicable federal laws.

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

It is generally improper for federal judicial nominees to comment on whether particular Supreme Court cases were correctly decided (or overturned). *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C). Because *Lochner* has been overturned by the Supreme Court, I would not apply it, but would instead faithfully apply all binding precedent of the Supreme Court and the Eleventh Circuit.