Nomination of Corey Maze to the United States District Court for the Northern District of Alabama
Questions for the Record
October 24, 2018

QUESTIONS FROM SENATOR FEINSTEIN

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

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

   It is never appropriate.

   b. Do you believe it is proper for a district court judge to question Supreme Court precedent in an opinion?

   Supreme Court precedent is binding on a district court, so it is generally not proper for a district court judge to question Supreme Court precedent in an opinion. Where appropriate, however, district court judges may point out conflicts, variations, or inconsistencies in Supreme Court precedent to invite clarification.

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

   District Court opinions have no precedential value in the Eleventh Circuit, but the need for predictability warrants against inconsistent district court rulings.

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

   It would be inappropriate for me, as a district court nominee, to opine on whether and when the Supreme Court should 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"?

   Yes, *Roe v. Wade* is precedent that must be followed by all district court judges.

b. Is it settled law?

Yes, *Roe v. Wade* is precedent that must be followed by all district court judges.

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

Yes, *Obergefell* is precedent that must be followed by all district court judges.

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 inappropriate for me, as a district court nominee, to provide a personal opinion regarding the correctness of a Supreme Court majority or dissenting opinion. If confirmed, I will faithfully apply Supreme Court precedent.

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

Yes, *Heller* left room for some regulation of firearms. *See Heller*, 554 U.S. at 626-27. It would be inappropriate for me, as a district court nominee, to opine as to the scope of appropriate regulations or whether a regulation is "common sense." If confirmed, I will faithfully apply Supreme Court precedent.

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

I have not studied the issue in depth but note that the Supreme Court stated in *Heller* that "nothing in our precedents forecloses our adoption of the original understanding of the Second Amendment." *Heller*, 554 U.S. at 625.

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

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

The scope of corporations' First Amendment rights after *Citizens United* is the subject of pending and impending litigation and political debate; thus, Canons 3(A)(6) and 5 of the Code of Conduct for United States Judges prevent me from answering this question.

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

See my answer to Question 5(a).

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

See my answer to Question 5(a).

6. Over the course of your career at the Office of the Attorney General for the State of Alabama, you have defended multiple death penalty convictions, some relating to ineffective assistance of counsel. In 2009, in the case of *Wood v. Allen*, you argued that an attorney's failure to raise a capital defendant's low intelligence did not constitute ineffective assistance of counsel, but should be inferred to be the product of "sound professional judgment." **When should an attorney's "sound professional judgment" be inferred, rather than demonstrated, from the record?**

Two such inferences applied in Holly Wood's case. First, whenever an inmate challenges the performance of his trial attorney, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Strickland v. Washington*, 466 U.S. 668, 689 (1984). Second, if the inmate is seeking a writ of habeas corpus from a federal district court, as Holly Wood was, the federal court must presume that a state court's findings of fact, and the "inferences properly drawn from such facts," are correct. *Parke v. Railey*, 506 U.S. 20, 35 (1992).

7. This year, in 2018, you defended Alabama's voter identification law, Ala. Code § 17-9-30, in the United States Court of Appeals for the Eleventh Circuit. Plaintiffs alleged that the law impermissibly and disparately impacted minority voters. You argued it did not and that Section 2 of the Voting Rights Act "should not be read to require perfectly equal levels of convenience" for all voters.

   a. What is the basis for your position that minority voters were not disparately impacted by the law?

   Your question is premised on a quote from Alabama Secretary of State John Merrill's brief in Eleventh Circuit Case No. 18-10151, *Greater Birmingham Ministries v. Secretary of State for the State of Alabama* ("*GBM*"). I did not write that brief, nor have I had any involvement in that appeal in 2018 or otherwise. My name is listed on the brief because I defended Secretary Merrill's deposition, and deposed some of the Plaintiffs' witnesses, when the case was in the district court. The *GBM* appeal is still pending before the Eleventh Circuit; thus, Canon 3(a)(6) of the Code of Conduct for United States Judges dictates that I should not comment on the case.

   b. What evidence did you have for this conclusion?

   See my answer to Question 7(a).

   c. Can differing "levels of convenience" ever violate the Voting Rights Act or the Fourteenth Amendment? Why or why not?

   See my answer to Question 7(a).

8. In 2008, you filed an *amicus curiae* brief on behalf of thirty-five states and the District of Columbia in the case of *Melendez-Diaz v. Commonwealth of Massachusetts*. You argued that the written report of a forensic drug analysis was not "testimonial" evidence within the context of the Sixth Amendment's Confrontation Clause, and thus did not necessitate the lab analyst's testimony at a criminal trial. You suggested that, by categorizing such lab reports as "testimonial" evidence, states would be required to "produce the testing analyst at every drug-related trial," causing "systematic gridlock in state courts and forensic laboratories." The Supreme Court disagreed and found that such lab reports are, in fact, testimonial evidence and are subject to a *Crawford* analysis. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009).

   Is judicial efficiency and potential "gridlock" a factor to be considered when discerning a criminal defendant's constitutional rights? Why or why not?

   No, at least not with respect to the Confrontation Clause. As your question notes, the Supreme Court rejected the States' argument. In confirmed, I would faithfully apply Supreme Court and Eleventh Circuit precedent regarding the Confrontation Clause.

9. Your office was accused of withholding evidence in the capital murder trial of Daniel Wade Moore. Judge Steve Haddock found that willful and intentional misconduct had, in fact, occurred. In 2005, similar allegations were made by Moore's attorneys.

   a. Explain the circumstances of these allegations and their ultimate resolution.

   As explained in my response to Question 9(b), I was not involved in the Daniel Wade Moore prosecution when the *Brady* violation occurred, so the following answer is based on the accounts of the attorneys and investigators involved. Karen Tipton was murdered in Decatur, Alabama. Having no leads, the Decatur Police Department requested an FBI profile of potential suspects to narrow their search. The FBI sent a profiler to Decatur, and that person was given a copy of the police case file and the opportunity to conduct interviews. Before a profile was generated, however, Decatur Police arrested Daniel Wade Moore based on a tip given by his uncle. Thus, the FBI did not generate a profile. Shortly before trial, the local district attorney recused himself and handed the case to the state Attorney General, who did not know about the abandoned FBI profile project. The newly-assigned state prosecutor told the court and Defense counsel that he had produced all relevant materials, unaware that the FBI possessed a copy of the local investigators' case file (which the Defendant had) and the profiler's notes (which the Defendant did not have). The Defendant filed a post-trial *Brady* motion. In response, the state prosecutor secured and produced the FBI's file. The trial court found a *Brady* violation and dismissed Mr. Moore's indictment.

   b. What was found to have been withheld? What was your involvement in the withholding of that evidence?

   I was not involved in the *Brady* violation described above. My first involvement in the case was the filing of a mandamus petition to reinstate Mr. Moore's indictment, after the trial court issued its *Brady* ruling. That petition was granted. I then became part of the

trial team, in part to protect against any future *Brady* issues. As part of that assignment, I traveled to Quantico, Virginia to personally ensure that the FBI had produced its entire file to the State and, by extension, Mr. Moore.

c. Other than the allegations previously described, have you ever been accused, either formally or informally, of any type of prosecutorial misconduct, ethical violation, or discovery violation? If so, please explain the circumstances and ultimate resolutions of those allegations.

No.

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

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

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"?

Administrative law as is vast body law that, like all laws, must be faithfully enforced consistent with precedent of the Supreme Court and the relevant court of appeals (in my case, the Eleventh Circuit).

11. On your Senate Questionnaire, you indicate that you have been a member of the Federalist Society since 2017. The Federalist Society's "About Us" webpage explains the purpose of the organization as follows: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law." It says that the Federalist Society seeks to "reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law

students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community."

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

I did not write this statement and thus cannot elaborate on what its author meant.

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

I did not write this statement and thus cannot elaborate on what its author meant.

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

I did not write this statement and thus cannot elaborate on what its author meant.

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

Not often. If confirmed, I would start by determining whether the Supreme Court or Eleventh Circuit had interpreted the statute. If so, I would faithfully apply those courts' interpretation. If not, I would construe the statute by its text and what the text implies. Only if the text failed to provide an answer would I consider secondary sources such as legislative history.

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 October 24, 2018. The next day, I met with and/or called colleagues with whom I worked on the cases mentioned in your questions and other Committee members' questions to discuss our work on those cases. After these discussions, I began drafting my responses and finished the next day (October 26th). I then shared my draft responses with members of the Department of Justice Office of Legal Policy, received comments, and then finalized my answers. Each of these answers, and the answers to questions posed by other members of the Committee, is my own. I have authorized the Office of Legal Policy to submit my answers to the Committee on my behalf.

Nomination of Corey Landon Maze, to be United States District Court Judge for the Northern District of Alabama
Questions for the Record
Submitted October 24, 2018

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?

   As a district judge, I would look at any and all factors articulated by relevant precedent of the Supreme Court and Eleventh Circuit, including *Washington v. Glucksberg*, 521 U.S. 702 (1997).

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

      Yes.

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

      Yes. I would consider any sources previously relied upon by the Supreme Court and Eleventh Circuit, including common law, state constitutions, and treatises.

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

      Yes, I would faithfully follow any binding precedent of the Supreme Court and Eleventh Circuit. If neither of those courts had ruled on the issue, then I would consider rulings from other circuits' courts of appeals.

   d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right had been recognized by Supreme Court or circuit precedent?

      Yes on both questions.

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

      Yes, I would consider any and all factors articulated by relevant precedent of the Supreme Court and Eleventh Circuit.

f. What other factors would you consider?

See my answer to Question 1(e).

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

Yes, the Supreme Court has "repeatedly recognized that neither federal nor state government acts compatibly with the equal protection principle when a law or official policy denies to women, simply because they are women, full citizenship stature[.]" *United States v. Virginia*, 518 U.S. 515, 533 (1996).

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

I would respond by citing the Supreme Court's binding precedent in *United States v. Virginia*, 518 U.S. 515 (1996), which says that the Fourteenth Amendment applies to gender.

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?

This is an academic question that I have not studied. If confirmed, I would faithfully apply *United States v. Virginia* and its progeny.

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

Gay and lesbian couples must be afforded the right to marry "on the same terms as accorded to couples of the opposite sex" under the Fourteenth Amendment. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2607 (2015).

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

The Fourteenth Amendment requires that States provide any persons under their jurisdiction with the equal protection of the laws. How that protection applies to transgender persons is being presently litigated; thus, Canon 3(A)(6) of the Code of Conduct for United States Judges prohibits me from answering this question.

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

Yes, the Supreme Court has so held. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479

(1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

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

Yes, the Supreme Court has so held. *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?

Yes, the Supreme Court has so held. *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.

See my response to Questions (3)(a) and 3(b).

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?

For a district judge, whenever Supreme Court or Eleventh Circuit precedent makes it appropriate.

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

It depends on the case. Expert opinions on scientific issues, for example, are often an important (if not deciding) factor. As a district judge, I would consider such evidence any time it is allowed by the Federal Rules of Evidence or Supreme Court and Eleventh Circuit precedent.

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

afforded to LGBT individuals?

I agree to faithfully protect the rights of LGBT individuals in accordance with Supreme Court and Eleventh Circuit precedent. *See*, *e.g.*, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comimssion*, 138 S. Ct. 1719, 1727 (2018) ("Our 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.").

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

Whenever Justice Kennedy was writing for a majority of the Supreme Court in a case that is binding precedent on the question presented.

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

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

Brown is binding Supreme Court precedent that, if confirmed, I would faithfully apply as a district court judge. Whether *Brown* is consistent with originalism is an academic question that I have not sufficiently studied to offer an opinion.

b. How do you respond to the criticism of originalism that terms like "'the freedom of speech,' 'equal protection,' and '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 Oct. 23, 2018).

I have not studied this academic question. If confirmed, I would apply each of these terms consistently with relevant Supreme Court and Eleventh Circuit precedent.

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?

Yes, if the Supreme Court so holds. If confirmed, I would interpret constitutional provisions in accordance with relevant Supreme Court and Eleventh Circuit precedent.

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

See my response to Question 6(c) above.

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

I would interpret constitutional provisions in accordance with relevant Supreme Court and Eleventh Circuit precedent. If those courts had yet to interpret the provision, I would start with the provision's plain text and then (if necessary) consider other authorities cited by the Supreme Court and Eleventh Circuit in discerning constitutional provisions.

7. You have represented the State of Alabama while serving in the Office of the Alabama Attorney General.

a. If confirmed, do you agree there are circumstances in which it may be appropriate to recuse yourself from cases where the State of Alabama is a party?

Yes.

b. If confirmed, do you commit to following all applicable judicial ethics rules in determining whether to recuse yourself in cases where former clients are parties?

Yes.

8. In your Senate Judiciary Committee Questionnaire, you indicate that you represented the State of Alabama at trial and on appeal in *Alabama v. Daniel Wade Moore*, No. CC-00-1260, CC-02-646 (Morgan County Circuit Court). The trial court determined that the State committed a *Brady* violation when the State failed to turn over a 245-page file from the FBI.

a. During your time at the Office of the Attorney General, did you receive any training on the scope of a prosecutor's *Brady* obligations?

Brady has been discussed numerous times in cases I prosecuted and in Continuing Legal Education courses I attended.

b. Were you ever accused of or have you ever committed any *Brady* violations?

I have never committed a *Brady* violation, nor do I believe that I have been accused of such a violation, at least in a formal motion.

c. Did you play any role in the *Brady* violation that occurred in the Daniel Wade Moore case? If so, please describe your role.

No. I became involved in the Daniel Wade Moore prosecution after the trial court issued its *Brady* ruling. In fact, I personally traveled to Quantico, Virginia before the second trial to ensure that the FBI had turned over its entire file to our prosecution team.

d. Did you have any knowledge of the 245-page file from the FBI prior to the defendant's conviction?

No.

e. What did you learn from your involvement in *Alabama v. Daniel Wade Moore*?

I learned many lessons from the Daniel Wade Moore case. Regarding the production of documents, I learned that coordination between local, state, and federal agencies should not be taken for granted.

f. After *Alabama v. Daniel Wade Moore*, did you make any recommendations to the Office of the Attorney General for ways to avoid *Brady* violations in the future?

Yes. I was an appellate attorney at the time of the *Brady* ruling in Daniel Wade Moore's case. The Attorney General assigned me to that case, and ultimately the criminal trials division, to protect against future *Brady* violations, as well as other common appellate issues. Thus, I discussed *Brady* obligations with the trial team on numerous occasions from 2005 to 2009.

9. In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Supreme Court held that executing individuals with intellectual disabilities is inconsistent with the Eighth Amendment of the Constitution. Prior to the trial in *Wood v. Allen*, 130 S. Ct. 841 (2010), an evaluator determined the defendant was "'at least functioning in the borderline range of intellect' and 'is still reading on a less than third grade level.'" Brief of Respondents at 7, *Wood v. Allen*, 558 U.S. 290 (2009). What steps did you take to ensure that the State of Alabama did not violate the Eighth Amendment by seeking to execute an intellectually disabled defendant?

I did not represent Commissioner Allen until the Supreme Court granted Mr. Wood's petition for certiorari review, so I did not personally take any steps to evaluate Mr. Wood's *Atkins* claim. But, consistent with our standard practice in post-conviction cases involving an *Atkins* claim, the State had Mr. Wood independently evaluated to ensure that he functioned at a level permitted by the Supreme Court. Recently, the State's independent evaluation of death row inmate Lam Luong affirmed his post-conviction *Atkins* claim, and the State agreed to his resentencing without a hearing.

10. Do individuals challenging voting restrictions have to prove intentional discrimination to succeed?

This issue is pending in cases involving the Fourteenth and Fifteenth Amendment and the Voting Rights Act of 1965; thus, Canon 3(A)(6) of the Code of Conduct for United States Judges prohibits me from answering this question. If confirmed, I will faithfully apply the precedent of the Supreme Court and Eleventh Circuit on this issue.

Nomination of Corey Landon Maze to be
United States District Judge for the Northern District of Alabama
Questions for the Record
October 24, 2018

QUESTIONS FROM SENATOR BLUMENTHAL

While serving as a Special Deputy Attorney General for the state of Alabama, you filed a brief defending Alabama's voter identification laws in *Greater Birmingham Ministries v. Secretary of State for the State of Alabama*.[1] In this brief, you reason, "Plaintiffs argue that it is less convenient for the poor to get an ID than it is for those who have greater means, but that is true for most things in life, and any such inconvenience is not caused by a person's race, but by a person's means."[2] According to the Henry J. Kaiser Family Foundation, in 2016, 12% of white people in Alabama were classified as poor, 25% of black people in Alabama were classified as poor, and 34% of Hispanic people in Alabama were classified as poor.[3]

1. **Do you believe that race and class are historically, culturally, and/or socially linked in the United States today? Do you believe that this link exists in Alabama?**

   Your question is premised on a quote from Alabama Secretary of State John Merrill's brief in Eleventh Circuit Case No. 18-10151, *Greater Birmingham Ministries v. Secretary of State for the State of Alabama* ("*GBM*"). I did not write that brief, nor have I had any involvement in that appeal. My name is listed on the brief as one of Secretary Merrill's attorneys because I defended Secretary Merrill's deposition, and deposed some of the Plaintiffs' witnesses, when the case was in the district court. Furthermore, the *GBM* appeal is still pending before the Eleventh Circuit; thus, Canon 3(a)(6) of the Code of Conduct for United States Judges dictates that I should not comment on the case.

   I have not reviewed the Kaiser study that you reference and thus cannot comment on its accuracy.

2. **If you do not believe such a link exists, please explain the above statistics showing a seeming correlation between race and class.**

   See my answer to Question 1.

3. **If you do believe such a link exists, would you concede that the law at issue in *Greater Birmingham Ministries* would have an impact on a larger percentage of black and Hispanic voters in Alabama than on white voters in Alabama?**

   See my answer to Question 1. Canon 3(a)(6) prohibits me from commenting on the law at issue in the *GBM* case.

Your Senate Judiciary Questionnaire includes a series of articles detailing that a court found that your office had willfully and intentionally withheld evidence in a capital murder case.[4] As a former prosecutor, I am deeply concerned about this sort of behavior – particularly in a capital case.

1. **Why do you believe that any prosecutor who has been found to have willfully and intentionally withheld evidence in a capital case should be elevated to the position of a United States District Court Judge?**

   I have prosecuted six capital murder trials in Alabama state courts; none of which involved a finding that I or anyone on my team withheld evidence.

   I was not a member of the prosecution team found to have violated the discovery mandates of *Brady v. Maryland*, 373 U.S. 83 (1963) in the articles you cite. To the contrary, I was added to the State's prosecution team after the trial court issued its *Brady* ruling, in part to protect against any *Brady* issues recurring at the Defendant's re-trial.

2. **What do you believe is the appropriate sanction for a prosecutor who willfully and intentionally withholds evidence in a capital murder case?**

   It depends on the circumstances. If confirmed, I would consider imposing sanctions permitted by the Supreme Court and Eleventh Circuit precedent based on the circumstances of the misconduct and its impact on the case. I would also consider whether to report the prosecutor's misconduct to the appropriate authorities as allowed by Canon 3(B)(5) of the Code of Judicial Conduct for United States Judges.

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[1] *See* Brief of Appellee / Defendant, Alabama Secretary of State John Merrill, *Greater Birmingham Ministries v. Secretary of State for the State of Alabama*, 2018 WL 1625640, No. 18-10151 (11th Cir. Mar. 30, 2018).
[2] *Id.* at 29.
[3] Henry J. Kaiser Family Foundation, *Poverty Rate by Race/Ethnicity* https://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity/?dataView=0&currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.
[4] Sheryl Marsh, *Tipton judge cites misconduct - Haddock says prosecutors withheld evidence, but delays motion to dismiss charges; jury selection begins*, DECATUR DAILY (Apr. 14, 2009), SJQ Attachment 12 (e) at pp. 577– 78

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

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

   I believe that judges "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary," Canon 2(A), Code of Judicial Conduct for United States Judges, and that intentionally perjuring oneself would undermine the public's confidence in the integrity of the judiciary. It is not appropriate, however, for me to comment on the appropriate sanction for a judge who commits perjury under Canon 5 of the Code of Judicial Conduct for United States Judges.

There have been recent reports that the Heritage Foundation was planning to run a secret clerkship training program.[5] I am generally concerned about growing attempts by outside groups to buy influence in the judiciary.

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

   I have no knowledge of the training program described in the article you referenced, nor do I have any plans to participate in any such program.

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

   I have attended several lunchtime meetings of the Montgomery and Birmingham chapters of the Federalist Society. I do not have a complete list of these meetings.

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

Questions for the Record for Corey L. Maze
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. According to a Pew Research study, just over 55% of eligible voters participated in the 2016 election. The United States ranks near the bottom of developed countries in terms of voter turnout. Yet, in Greater Birmingham Ministries v. Secretary of State for the State of Alabama, you defended Alabama's voter ID law, which was designed to further suppress voter turnout—in particular by minority, low-income, and disabled voters.

   a. When working on this case, did you educate yourself with scholarly research regarding voter fraud? If so, can you detail the research you consulted, who conducted it, and what the conclusions were?

      The *Greater Birmingham Ministries* case is pending before the Eleventh Circuit; thus, Canon 3(a)(6) of the Code of Conduct for United States Judges dictates that I should not comment. Furthermore, the research I conducted in preparation for my role in the case is subject to work-product privilege and is thus protected from disclosure.

   b. Are you aware that evidence shows that voter fraud is exceedingly rare, including one study that found only 31 instances of possible voter fraud over a 14-year period where more than 1 billion ballots were cast?

      See my answer to Question 2(b).

Nomination of Corey Landon Maze
United States District Court for the Northern District of Alabama
Questions for the Record
Submitted October 24, 2018

QUESTIONS FROM SENATOR BOOKER

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

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

    It is not appropriate for me, as a judicial nominee, to opine on political matters of the Senate, such as the dates upon which its Committees meet. *See* Canon 5 of the Code of Conduct for United States Judges.

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

    See my answer to Question 1(a).

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

    See my answer to Question 1(a).

2. According to a Brookings Institute study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.[1] Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.[2] These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.[3] In my home state of New Jersey, the disparity between blacks and whites in the state prison system is greater than 10 to 1.[4]

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

    I believe racism exists, but I have not reviewed the Brookings Institute study you reference or other studies concerning the specific topic of implicit racial bias in the criminal justice system. As a district judge, I would abide by my oath "administer justice without respect to persons, and do equal right to the poor and to the rich[.]" 28 U.S.C. §453.

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

Yes, statistics indicate that more African Americans than white Americans are incarcerated in the United States.

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[1] JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), *available at* https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/.

[2] *Id.*

[3] ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), *available at* http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/.

[4] *Id.* at 8.

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.

See my answers to Questions 2(a) and 2(b).

3. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.[5] In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.[6]

a. Do you believe there is a direct link between increases of 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 read the referenced studies or studied this issue, so I cannot offer an informed opinion.

b. Do you believe there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

See my answer to Question 3(a).

4. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

Yes.

5. The color of a criminal defendant plays a significant role in capital punishment cases. For instance, people of color have accounted for 43 percent of total executions since 1976 and 55 percent of those currently awaiting the death penalty.[7]

a. Do those statistics alarm you?

If confirmed, racial prejudice will have no place in my courtroom. I will faithfully apply all laws, and faithfully follow all Supreme Court and Eleventh Circuit precedent, without regard to a person's race. To offer personal views on the study you cite, however, would be inappropriate under Canons 2 and 3 of the Code of Conduct for United States Judges because doing so might be deemed to suggest that I would decide a case based on something other than the law and facts before me.

b. Do you believe it is cruel and unusual to disproportionately apply the death penalty on people of color? Why not?

The Constitution does not allow race to be considered as a factor when considering whether to impose the death penalty. Canon 3(A)(6) of the Code of Conduct for United States Judges dictates that I not comment on the question whether statistical disparities such as the ones you cite violate the Eighth Amendment because that question is presently pending before the Supreme Court. *See Wood v. Oklahoma*, Docket No. 17-6891.

c. The color of the victim also plays an important role in determining whether the death penalty applies in a particular case. White victims account for about half of all murder victims, but 80 percent of all death penalty cases involve white victims. If you were a judge, and those statistics were playing out in your courtroom, what would you do?

I would sentence each defendant according to the facts of his case, not his race or the race of his victim. If I determined that the prosecutor was refusing to seek the death penalty because of victims' race, I would consider any remedial steps available under case law, statutes, and rules.

6. Since Shelby County, Alabama v. Holder, states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud.

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[5] THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), *available at* http://www.pewtrusts.org/~/media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

[6] *Id.*

[7] The American Civil Liberties Association, Race and the Death Penalty, https://www.aclu.org/other/race-and-death-penalty (Last visited June 13, 2018).

a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?

The existence of voter fraud in Alabama is at issue in the pending case *Greater Birmingham Ministries v. John Merrill,* 11th Cir. Case No. 18-10151; thus, it would be inappropriate for me to answer this question. *See* Canon 3(A)(6), Code of Conduct for United States Judges.

7. In 2009, you submitted an *amicus curiae* in *Northwest. Austin Mun. Utility Dist. No. One v. Holder* in which you highlighted the burdens of Section Five of the Voting Rights Act and pointed out the current lack of discrimination in voting in Alabama. In support of that point, you argued that "Alabama had exceeded the national average in minority registration for 16 straight years."[8]

a. During the 16-year period you mentioned, did Alabama, or any political subdivision located in the State, engage in any tactics that discriminated against minority voters?

From 1993 to 2009, the Civil Rights Division of the United States Department of Justice objected to voting changes made by the State of Alabama three times and objected one time each to changes made by Mobile County, Tallapoosa County, and the cities of Alabaster, Calera, Foley, Greensboro, and Selma. The Department ultimately withdrew its objections against Foley and Mobile County and two of its three objections against the State. It would be inappropriate for me to comment on the merits of the objections that the Department did not withdraw.

8. In 2018, in your capacity as Special Deputy Attorney General, you defended the State of Alabama's voter ID law against constitutional and statutory challenges.[9] In the brief, you argued that the law should survive the challenges because Alabama provides a free ID and the legislature's intent to combat voter fraud was not discriminatory.[10]

a. Study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate someone voter at the polls.[11] One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.[12] Given these statistics, do you believe a voter ID law is necessary to combat in-person voter fraud?

Your question incorrectly assumes that I wrote the brief for Secretary of State John Merrill in Eleventh Circuit Case No. 18-10151, *Greater Birmingham Ministries v. John Merrill* ("*GBM*"). I did not write that brief, nor have I had any involvement in that appeal. My name is listed on the brief because I defended Secretary Merrill's deposition, and deposed some of the Plaintiffs' witnesses, when the case was before the district court. The *GBM* appeal is pending before the Eleventh Circuit; thus, Canon 3(a)(6) of the Code of Conduct for United States Judges dictates that I not answer questions regarding state voter ID laws.

b. At the point of filing the brief, how many instances of in-person voter fraud were prosecuted in the State of Alabama in the previous 10 years?

See my answer to Question 8(a).

c. Are you aware of some of the hidden costs of obtaining a "free" voter ID?

See my answer to Question 8(a).

d. Were you aware that it can cost up to $148.46 to obtain a free photo ID?[13]

See my answer to Question 8(a).

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[8] Brief of the Honorable Bob Riley, Governor of the State of Alabama, As Amicus Curiae in Support of Neither Party, *Northwest. Austin Mun. Utility Dist. No. One v. Holder* at 2, No. 08-322 (Feb. 26, 2009)
[9] Brief of Appellee/Defendant, Alabama Secretary of State John Merill, *Greater Birmingham Ministries v. Secretary of State for the State of Alabama*, 2018 WL 1625640, No. 18-10151 (11th Cir. Mar. 30, 2018).
[10] *Id.* at 14-15.
[11] JUSTIN LEVITT, THE TRUTH ABOUT VOTER FRAUD, BRENNAN CENTER FOR JUSTICE 6 (2007), *available at* http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf.
[12] Justin Levitt, *A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast*, THE WASHINGTON POST, Aug. 6, 2014, *available at* https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.4da3c22d7dca.
[13] Richard Sobel, Institute for Race & Justice, Harvard Law School 3 (2014), *available at* https://today.law harvard.edu/wp-content/uploads/2014/06/FullReportVoterIDJune20141.pdf.

e. Can you please explain the costs associated with the Alabama law here and explain why they are not just another means of suppressing the vote in poor and minority communities?

See my answer to Question 8(a).

9. In 2009, your office was found to have intentionally withheld evidence in a capital murder case.[14]

a. Please explain the circumstances under which your office was found to have willfully withheld evidence in that case.

I was not involved in the Daniel Wade Moore prosecution when the *Brady* violation occurred. The trial court's recitation of the *Brady* violation is reported in *State of Alabama v. Daniel Wade Moore*, 969 So. 2d 169, 171-74 (Ala. Crim. App. 2006).

b. Did you play any role in the withholding of evidence?

No, I became involved after the trial court issued its ruling on the *Brady* violation. In fact, I personally traveled to Quantico, Virginia before the second trial to ensure that the FBI had turned over its entire file to our prosecution team.

In my fifteen-plus years as a litigator, no court has ever found that I or anyone on my team withheld evidence.

[14] Sheryl Marsh, *Tipton judge cites misconduct – Haddock says prosecutors withheld evidence, but delays motion to dismiss charges; jury selection begins*, DECATUR DAILY (Apr. 14, 2009).

Questions for the Record from Senator Kamala D. Harris
Submitted October 24, 2018
For the Nomination of

Corey L. Maze, to the U.S. District Court for the Northern District of Alabama

1. More than fifty years ago, in *Reynolds v. Sims*, the U.S. Supreme Court wrote: "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." **Do you agree?**

   Yes.

2. In 2009, you submitted, as counsel of record, an amicus brief detailing Alabama's supposedly non-discriminatory voting atmosphere and the burdens Section 5 of the Voting Rights Act places on the State. You argued that Alabama's position on the Section 5 pre-clearance coverage list was no longer justified because, as of 2006, "Alabama had exceeded the national average in minority registration for 16 straight years."

   a. Chief Justice Roberts wrote in his *Shelby County* opinion that "voting discrimination exists; no one doubts that." **Do you agree with that?**

   Yes.

   b. After the U.S. Supreme Court's *Shelby County* decision, which effectively ended the Voting Rights Act's requirement that states with a record of discriminatory voting practices obtain federal permission in order to change their voting laws, numerous states, including Alabama, implemented new voting restrictions disproportionately disenfranchising minority voters.

      i. **Was *Shelby County* correctly decided?**

      As a district court nominee, it is inappropriate for me to opine on the correctness of a Supreme Court decision under the Code of Conduct for United States Judges.

      ii. **Did the Supreme Court in *Shelby County* underestimate the danger that states would restrict the right to vote?**

      As a district court nominee, it is inappropriate for me to opine on the correctness of a Supreme Court decision under the Code of Conduct for United States Judges.

3. After *Shelby County*, the main surviving part of the Voting Rights Act is Section 2, which allows people to go to court and challenge voting restrictions that have discriminatory results. Chief Justice Roberts stated during his confirmation hearing in 2005 that he had "no basis for viewing" Section 2 "as constitutionally suspect." **Do you agree with Chief Justice Roberts that the law is not constitutionally suspect?**

   The Constitutionality of Section 2 is the subject of pending and impending litigation; thus, it would be inappropriate for me to answer this question under Canon 3(A)(6) of the Code of Conduct for United States Judges.

4. The U.S. Supreme Court has long held that Section 2 of the Voting Rights Act, as amended in 1982, prohibits states from drawing voting districts that dilute the votes of minorities. **Do you accept that interpretation of Section 2 as a matter of statutory *stare decisis*?**

   Yes, if confirmed, it would be my duty to apply all binding decisions of the Supreme Court.

5. In 2018, in your capacity as Special Deputy Attorney General, you defended Alabama's voter identification law, Ala. Code § 17-9-30, against both statutory and constitutional challenge. Among other things, you argued that the law was valid because the legislature's intent to combat voter fraud was in no way related to discrimination.

   a. **Based on your experience, how prevalent is voter fraud?**

   Your question is premised on the notion that I argued on behalf of the State in the Eleventh Circuit Case, *Greater Birmingham Ministries v. John Merrill* ("*GBM*"), in 2018. But I have not been involved in that appeal. My name is listed on the Secretary's brief because I defended Secretary Merrill's deposition, and deposed some of the Plaintiffs' witnesses, when the case was before the district court.

   The *GBM* appeal is pending before the Eleventh Circuit; thus, Canon 3(a)(6) of the Code of Conduct for United States Judges dictates that I should not comment on the case or facts I discovered due to my involvement in the case.

   b. **Setting aside discriminatory intent, did Alabama's voter identification law have a disparate impact on individuals of color? If not, please explain why you think the law was race-neutral in effect.**

   See my answer to Question 5(a).

   c. **Do you believe that disparate impact may be probative of whether there was discriminatory intent in enacting a law?**

   See my answer to Question 5(a).

d. **Do you believe that Section 2 of the Voting Rights Act allows courts to consider disparate impact when evaluating whether a voting law must be struck down?**

See my answer to Question 5(a).

6. Alabama has since made it even harder for Alabamans to obtain the government-issued ID required to vote by closing scores of DMV locations in the state, many in majority-black counties.

a. **Does this change violate the U.S. Constitution?**

The issue of office closures is pending in the *GBM* appeal discussed in my response to Question 5(a). Canon 3(a)(6) of the Code of Conduct for United States Judges therefore dictates that I should not comment.

b. **Does this change violate Section 2 of the Voting Rights Act?**

See my answer to Question 6(a).

c. **Does this change suggest that your 2009 amicus brief underestimated the danger of discriminatory voting practices in states like Alabama?**

See my answer to Question 6(a).

d. Near the end of her dissent in *Shelby County*, Justice Ginsburg wrote that "[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet." **In light of recent changes to Alabama's voting laws, do you think that Justice Ginsburg's assessment was correct?**

See my answer to Question 6(a).

7. After *Shelby County*, Republican legislators in North Carolina likewise rushed through a laundry list of new voting restrictions—restrictions that disproportionately disenfranchised racial minorities. A unanimous panel of the U.S. Court of Appeals for the Fourth Circuit later held that these restrictions intentionally discriminated against African-American voters, targeting them with "almost surgical precision."[1]

a. **Was the federal court of appeals decision invalidating North Carolina's restrictions correct?**

It is inappropriate for me, as a district court nominee, to opine on the correctness of another court's ruling under the Code of Conduct for United States Judges.

[1] *See generally N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

b. **If Alabama's legislature enacted the same restrictions as North Carolina, would you, if still an Alabama government attorney, defend them? Please explain why or why not.**

The state Attorney General, not his deputies, decides whether to defend laws passed by the state legislature. If Alabama passed a law similar to North Carolina's, I would advise the Attorney General of binding Supreme Court precedent and non-binding Fourth Circuit precedent, plus any applicable rules and ethical canons.

c. **Are there any circumstances under which, if still an attorney for the State of Alabama, you would refuse to defend a law or rule regulating the right to vote? Please explain and provide examples.**

Yes. If, for example, the Alabama Legislature passed a law forbidding women, 20-year-olds, and/or African-Americans from voting, or from voting unless they paid a $50 poll tax, I would not defend the law. Nor do I believe the Attorney General would ask me to.

8. We have seen sensationalized assertions, including from the President, suggesting that voter fraud is rampant, to the point that elections are being "rigged." The President has claimed that he won the popular vote for the presidency if you deduct the "millions of people who voted illegally." The claim is not supported by any verifiable facts. Rather, independent analyses by the non-partisan Brennan Center, leading scholars, and other credible sources have found virtually no confirmed cases of voter fraud in the 2016 election, let alone millions of them. More broadly, every credible study of the issue indicates that voter fraud—and particularly the sort of in-person voter impersonation fraud that photo-ID laws purport to address—is incredibly rare. By one count, from 2000 to 2014, there were just 31 credible instances of impersonation fraud nationwide out of more than a billion ballots cast. In fact, the President's claims of massive fraud were contradicted by his own legal team, which argued in response to a recount request filed by Green Party Candidate Jill Stein: "On what basis does Stein seek to disenfranchise Michigan citizens? None really, save for speculation. All available evidence suggests that the 2016 general election was *not* tainted by fraud or mistake."

a. **Are you aware of any credible evidence indicating that "millions of people" voted illegally in 2016? If yes, please provide citations.**

No.

b. **Is it appropriate for the President of the United States to make unsubstantiated, false allegations about the integrity of our electoral system?**

It would be inappropriate for me, as a district court nominee, to comment on political matters under Canon 5 of the Code of Conduct for United States Judges.

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

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

      First, I would ensure that the applicable Sentencing Guidelines range is correctly calculated. Second, I would consider the presentence report and victim statements (if any). Finally, I would apply this information to impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes of federal sentencing set forth in 18 U.S.C. § 3553.

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

      By following the procedure described in my response to Question 9(a). I will also take note of other judges' sentences, particularly in my own district, to ensure that our sentencing practices are consistent and fair.

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

      The Guidelines are advisory, not binding. Section 5, Part K lists specific circumstances that may justify a sentence that falls outside of the advisory range. Also, the factors listed in 18 U.S.C. § 3553(a) may dictate a sentence that falls outside of the advisory range.

   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.[2]

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

         I have not studied this political issue and thus cannot offer a learned opinion on it. If confirmed, I will fairly apply the sentencing laws and guidelines.

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

         See my answer to Question 9(d)(i).

[2] Judge Danny C. Reeves, Responses to Senators' Questions for the Record, https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf.

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

See my answer to Question 9(d)(i).

iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and he has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.[3] **If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

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

   If confirmed, I would apply the applicable sentencing statutes, including mandatory minimum statutes. That said, yes, I can envision a scenario in which I write an order that states I would not have sentenced the Defendant to a particular sentence but for the statutory requirement.

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

   Charging policies are left to the executive branch, not the judiciary. That said, yes, I can envision discussions with federal prosecutors if I have concerns about ethical improprieties or prosecutorial misconduct.

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

   Clemency is also a power left to the executive branch, not the judiciary. As previously noted, I may state on the record that I would not have imposed a sentence but for a statutory requirement. Beyond that, I would leave clemency up to the Executive.

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

Yes.

[3] *See, e.g.*, Stephanie Clifford, *Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose*, N.Y. Times (July 28, 2014), https://www nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose html.

10. 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 that there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

       Yes, statistics indicate that more African-Americans than white Americans are incarcerated in state and federal prisons, despite making up a smaller percentage of the nation's population.

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

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

       Yes.

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

       I will seriously consider all persons when hiring staff and law clerks, regardless of race or gender.