

**Questions for the Record from Senator Kamala D. Harris**  
**Submitted July 1, 2020**  
**For the Nomination of:**

**Stephen P. McGlynn, to be United States District Judge for the Southern District of Illinois**

1. In 2013, Texas passed House Bill 2, which imposed restrictions on health care facilities that provided access to abortions. After the law passed, the number of those health care facilities dropped in half, from about 40 to about 20, severely limiting access to health care for the women of Texas. In *Whole Woman's Health*, the Supreme Court struck down two provisions of the Texas law based on its overall impact on abortion access in the state.

a. **When determining whether a law places an undue burden on a woman's right to choose, do you agree that the analysis should consider whether the law would disproportionately affect poor women?**

I will fully and faithfully follow *Whole Woman's Health* and embrace the concerns the Court expressed with respect to how the law may impact poor women disproportionately.

b. **When determining whether a law places an undue burden on a woman's right to choose, do you agree that the analysis should consider whether the law has an overall impact of reducing abortion access statewide?**

See my answer to 1(a).

2. In 2015, the U.S. Supreme Court ruled in *Obergefell v. Hodges* that the right to marry is fundamental and must be guaranteed to all same-sex couples.

a. **In your view, does the right to marry carry an implicit guarantee that everyone should be able to exercise that right equally?**

I will fully and faithfully apply *Obergefell v. Hodges* and follow all Supreme Court and Seventh Circuit precedent.

b. **If a state or county makes it harder for same-sex couples to marry than for straight couples to marry, are those additional hurdles constitutional?**

See my answer to 2(a). I believe this question relates to issues that may come before me and believe that the Canons of Conduct for United States Judges dictates that I decline to answer this question with any more specificity.

c. **If a state or county makes it harder for same-sex couples to adopt children, are those additional hurdles constitutional?**

See my answer to 2(b).

3. 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?**

18 U.S.C. Sec. 3553 lists seven factors to be considered in determining an appropriate sentence. I would ensure the applicable advisory Sentencing Guidelines range is correctly calculated. Next, I would consider the specific facts and circumstances of the case, review all applicable statutes, and the presentence report. I would consider any testimony or statements from the victim. I would consider any testimony or statements of witnesses, the defendant's family, friends, employers, educators, ministers and similar individuals. I would afford the defendant to make a statement in allocution and consider it. I would review any sentencing memoranda filed by counsel and listen to any arguments from counsel.

After reviewing all this information and considering those seven factors set out in 18 U.S.C. Sec. 34553(a)(1) thru (7), I would only then impose a sentence hoping to reflect the proper balance of the following: the need for the sentence imposed; to reflect the seriousness of the crime, to promote respect for the law, and to provide just punishment for the crime; to afford adequate deterrence to such conduct; to protect the public from further crimes by this defendant; and to provide the defendant with needed educational or vocational training, medical care, or other corrective treatment in the most effective manner.

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

See my answer to 3(a). As an Illinois Circuit Judge, I have significant experience handling felony criminal cases including murder, serious gun crimes and crimes against women, children, infants and the elderly. I will bring that experience to bear when determining appropriate sentences. I also have significant experience with criminal cases when juveniles are charged as adults and the special considerations such cases present.

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

I will fully and faithfully apply all Supreme Court and Seventh Circuit precedent to discern when it is appropriate to depart from the advisory Sentencing 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?**

My experience with Illinois law does not necessarily prove mandatory minimum sentences of incarceration are preferable. However, I do not have enough specific information about Judge Reeves' opinions and the crimes he is referring to nor the ages of those so sentenced, to be able to offer a meaningful assessment or critique of his opinions.

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

I can only speak to my experience in Illinois, and it is my observation that the more discretion a decerning trial judge has, the more likely he or she will be able to impose an equitable sentence and to advance the goals of justice.

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

Illinois' mandatory minimum sentence guidelines and mandatory sentence enhancement guidelines have at time caused draconian sentences to be imposed upon very young offenders where a different sentence may more closely serve the cause of justice and may result in a young person being successfully rehabilitated and restored to a productive role in society.

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>2</sup> **If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

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

I always seek to do justice. In the scenario you outline, I would state all the reasons for any sentence I impose, including those for which the sentencing court lacks discretion. In all circumstances, however, I would fully and faithfully apply the sentencing statutes and the

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

<sup>2</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>.

Supreme Court and Seventh Circuit precedent, putting aside my personal views. In the end, we are a court of law, and I am obliged to follow the law.

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

Ultimately, it is within the province of the Executive Branch to make charging decisions and the Judicial Branch must recognize that important separation of power and recognize that, absent a full trial on the merits, the trial judge is simply not privy to all the evidence nor in a position to evaluate the strength of witnesses or their willingness to participate.

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

The way the trial judge makes the record may affect a grant of clemency. The clemency power is reserved to the Executive Branch. Nonetheless, a trial judge might point out certain things on the record that may give the Executive Branch more assurances that clemency is appropriate in a particular case.

- 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.

4. 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?**

Absolutely.

- 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.**

Before I was elevated to the bench, I spent many years doing pro bono work for the NAACP and handled countless criminal cases on behalf of persons of color who were charged with a crime. My record demonstrates my sincere commitment for equal justice for all. However, I believe, if confirmed, my docket will have

many cases where a criminal defendant, a convicted person seeking to have his or her conviction set aside, or a person claiming his or her civil rights were violated because of “racial disparities in our criminal justice system” or “systemic racial prejudice or systemic racial animous” in our justice system resulting in injury. For that reason and others, I believe the Code of Conduct for United States Judges prevents me from offering any opinions or taking any public position with respect to these serious accusations.

5. 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.