Chairman Patrick Leahy
Questions for the Record
Nomination of Michael Boggs
To Be U.S. District Judge for the Northern District of Georgia
May 20, 2014

1. **As a United States Senator, I believe that there is no greater responsibility than the one I make when I take the oath of office and affirm that I will "support and defend the Constitution of the United States." At your hearing, in an exchange with Senator Franken, you testified that one of the differences between your role as a judge and your previous role as a legislator was that, "When I was a legislator, I did not have an obligation to be faithful to the rule of law." Why do you believe legislators are not obligated to be faithful to the rule of law?**

   Response: All government officers take oaths acknowledging an obligation to uphold the Constitution thereby representing that the rule of law is superior to the rule of persons. I did not mean to imply that legislators are above the law or not bound to the laws of our society. I simply used the term "rule of law" to differentiate the role of a judge from that of a legislator and to emphasize that members of the judiciary are particularly obligated to follow precedent and not decide cases based on popular will, unless that will is enacted through the legislative process and is consistent with the Constitution. While it is true that legislators themselves are subject to the rule of law as a constraint on their behavior, as are all citizens, I simply meant that legislators do not have the same obligations of faithfulness to precedent as judges. Legislators have discretion to make any law deemed appropriate within its powers, whereas the judiciary has a more specific and constrained duty of adherence to precedent.

2. **You testified at your hearing that your legislative votes related to the Confederate symbol on the Georgia state flag represented the will of your constituents. Given that your house district had a sizable African American constituency, did you consider their views when you voted against changing the Georgia flag? If so, what steps did you take to become aware of their views?**

   Response: I considered the views of all of my constituents when I cast that vote thirteen years ago. The vote on the flag occurred with very little notice. Most of my colleagues and I were only given notice that a vote would occur just hours prior thereto and only then did we see for the first time the flag we were voting to adopt. While the issue of changing the flag was generally a topic of discussion within my legislative district at the time, I was quoted very shortly before that vote as saying that I did not think the vote would occur. As a result, there was virtually no time to speak with those within my legislative district about this issue. I did however have the occasion prior to the vote to speak with several African-American constituents, including both elected officials and members of the general public. While they generally made known their support for changing the flag, those with whom I spoke always stated that they supported me regardless of how I voted, and indeed, when I faced a challenger in my 2002 Democratic primary election, roughly one year after the flag vote, I was re-elected with 90% of the vote in my district.

3. **During your hearing, in response to Senator Hirono's question asking whether you had ever voted your conscience against the will of your constituents while you were a state legislator, you testified that you had voted for reapportionment maps supported by Democrats but not supported by the majority of your constituents.**

    a. **Why do you believe this was a "vote of conscience" for you, as opposed to one of alignment with your political party's interest?**

    Response: For me, voting my conscience as a legislator sometimes meant casting votes contrary to what I considered to be the will of the majority of my constituents, and on other occasions voting my conscience meant casting votes contrary to what party leadership desired. I did not mean to suggest that my particular "votes of conscience" were necessarily cast only when presented with a moral choice on a public policy matter. During the majority of my legislative service, my district was rapidly changing from a majority Democratic district to a majority Republican district. Votes for the Democratic Party reapportionment maps, while very well in alignment with my party at the time, were viewed by many of my constituents as not in their best interest. However, I believed that the maps presented a reasonable compromise and were favorable to my district. For these reasons, I voted my personal conscience on that issue.

    b. **Please describe any other examples of votes you believed were based on your conscience against the will of the majority of your constituents.**

    Response: While a member of the Georgia legislature I had the occasion to cast thousands of votes, some of which I am sure were based on my personal beliefs which differed from that of the majority of my constituents or were not in alignment with my political party's interest. After ten years, I do not recall every vote I cast and do not recall any other specific examples of votes I believed were based on my conscience against the will of the majority of my constituents, although I'm sure it happened.

4. **In 2004, while a member of the Georgia legislature, you spoke on the floor in support of a resolution calling for a state constitutional amendment banning same-sex marriages. During your speech, you stated that lawmakers should be able to come together because such a ban was "commonsensical [and] premised on good conservative Christian values." You also suggested that the significant step of amending the state constitution was warranted to protect against "the dangers we face with respect to activist judges."**

    a. **Who do you consider to be an "activist judge"?**

    Response: It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for a federal district court judgeship, to express my personal opinion about whether any particular judge is "activist." Respectfully, when I talked about activist judges in that floor speech ten years ago as a state legislator, I was referring generally to the possibility of a judge ruling that same-sex marriage

was constitutional. This issue looked different to me ten years ago when I was serving in a very different role as a state legislator than it looks now, especially after having been a judge for the last ten years. Federal judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully apply precedent whether it be *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decision of the United States Supreme Court or the Eleventh Circuit Court of Appeals. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly.

b. Was the Supreme Court "activist" when it decided *Roe v. Wade (1973)*?

Response: This case is binding precedent, and if confirmed as United States District Court Judge, I would apply this precedent and any other precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals fairly and impartially. During the entirety of my ten-year judicial career I have faithfully followed binding precedent.

c. Was Justice Kennedy an "activist" when he wrote the majority opinions in *Lawrence v. Texas,* 539 U.S. 558 (2003) or *United States v. Windsor,* 570 US 12 (2013)?

Response: These cases are binding precedent, and if confirmed as United States District Court Judge, I would apply these precedents and the binding precedent of all cases of the United States Supreme Court and the Eleventh Circuit Court of Appeals fairly and impartially. During the entirety of my ten-year judicial career I have faithfully followed binding precedent.

5. **Please describe your understanding of the scope of the constitutional right to privacy. What do you believe to be the key elements of that right?**

Response: The Supreme Court has stated that "[w]hile there is no 'right of privacy' found in any specific guarantee of the Constitution, the Court has recognized that 'zones of privacy' may be created by more specific constitutional guarantees and thereby impose limits upon government power. See *Roe v. Wade*, 410 U.S. 113, 152-153 (1973)." *Paul v. Davis*, 424 U.S. 693, 712-713 (1976). And, "[i]n *Roe* the Court pointed out that the personal rights found in this guarantee of personal privacy must be limited to those which are 'fundamental' or 'implicit in the concept of ordered liberty' as described in *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)." *Id.* Activities that fall within this definition include "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education. In these areas it has been held that there are limitations on the States' power to substantively regulate conduct." *Id*. Privacy interests have also been found to exist in connection with the First Amendment's protection for freedom of assembly, *Bates v. City of Little Rock*, 361 U.S. 516, 522-523 (1960), and in connection with the Fourth Amendment's guarantee against unreasonable searches and seizures. *United States v. Jones*, 132 S. Ct. 945, 950-951 (2012). If confirmed, I would apply these precedents and all other

binding precedent of all cases of the United States Supreme Court and the Eleventh Circuit Court of Appeals on the issue of the constitutional right to privacy.

6. **At your nomination hearing, you testified about a case when you were a trial court judge, wherein the lawyer on the case told you that he had presented the case to your circuit's chief judge who refused to hear it. The case involved a woman who identified herself as a lesbian in chambers on the question of approving her adoption of a child from foster care. You testified that you heard the case and approved the adoption. Understanding that an adoption case may be sealed, I do not expect you to provide any identifying details on this case. However, can you provide me with the name and contact information of any person who can personally verify the facts of the matter as you testified to the Committee?**

   Response: Due to privacy concerns, this answer was provided confidentially to the chair and ranking member.

7. **In the past several years, the Supreme Court struck down a number of federal statutes most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, *Flores v. City of Boerne*, 521 U.S. 507 (1997), *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000), *Board of Trustees v. Garrett*, 531 U.S. 356 (1999), and *Coleman v. Court of Appeals of Maryland,* 132 S. Ct. 1327 (2012). The Supreme Court also struck down statutes as falling outside the authority granted to Congress by the Commerce Clause in the case of *U.S. v. Lopez*, 514 U.S. 549 (1995), and *U.S. v. Morrison*, 529 U.S. 598 (2000). Similarly, a majority of the justices of the Court determined that core provisions of the Affordable Care Act were beyond the scope of the Commerce and Spending Clauses in *Nat'l Federation of Independent Business v. Sebelius*, 567 U.S. 1 (2012), and upheld the individual mandate under the taxing power. The Court struck down other federal statutes as violations of the 10th Amendment or the 11th Amendment, and part of a landmark Voting Rights Act, without articulating any clear basis for its unconstitutionality in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). These cases rely upon an expansive view of state's rights, and have been described as shifting powers to state governments as Congressional authority is diminished.**

   (a) **What is your view of these decisions? In your opinion, do they constitute "judicial activism"?**

      Response: These cases are binding precedent, and if confirmed as United States District Court Judge, I would apply these precedents and the binding precedent of all cases of the United State Supreme Court and the Eleventh Circuit Court of Appeals fairly and impartially. During the entirety of my ten-year judicial career I have faithfully followed binding precedent.

   (b) **What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, under Section 5 of the Fourteenth Amendment, and Section 2 of the Fifteenth Amendment?**

Response: United States Supreme Court precedent dictates that the Commerce Clause allows congressional regulation of commerce in three broad categories. Congress may (1) "regulate the use of the channels of interstate commerce"; (2) "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and, (3) "regulate those activities having a substantial relation to interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-559 (1995); *see also United States v. Morrison*, 529 U.S. 598, 609 (2000).

"Section 5 of the Fourteenth Amendment grants Congress the power to enforce the substantive guarantees contained in Section 1 by enacting appropriate legislation. Congress is not limited to mere legislative repetition of th[e Supreme] Court's constitutional jurisprudence. Rather, Congress' power to enforce the Amendment includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Board of Trustees v. Garrett*, 531 U.S. 356 (2001) (internal citations and quotation marks omitted.)

"[Section] 2 of the Fifteenth Amendment expressly declares that Congress shall have power to enforce this article by appropriate legislation. By adding this authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in Section 1. It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. *South Carolina v. Katzenbach*, 383 U.S. 301, 325-326 (1966) (internal quotations omitted.) *See also Shelby County v. Holder*, 133 S. Ct. 2612 (2013). Therefore, "in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting." *Katzenbach*, *supra*.

If confirmed, I am committed to follow binding precedent from the United States Supreme Court and the Eleventh Circuit in analyzing the scope of congressional power under Article I of the Constitution.

8. **Canon 7 in the Georgia Code of Judicial Conduct states that Judges shall refrain from political activity inappropriate to their judicial office, specifically that a judge or a candidate for public election to judicial office shall not publicly endorse a candidate for public office or make a contribution to a political organization. At your nomination hearing you confirmed in your testimony that you made a contribution to Georgia Conservatives in Action in September of 2012. Did you also make an earlier contribution in April 2012 to the same group for $1,000?**

Response: Yes. I am very respectful and mindful of the obligations of judges pursuant to the Georgia Code of Judicial Conduct and throughout my ten-year judicial career have endeavored to be faithful to and exceed my legal obligations pursuant thereto. During my entire judicial career, I have never publicly endorsed any candidate for public office nor made a contribution to a "political organization" as that term is defined by the Georgia Code of Judicial Conduct.

9. **You testified that at the time you made your contribution to Georgia Conservatives in Action in 2012 you had no knowledge that this organization sponsored or endorsed candidates for public office. A quick Google search reveals that in December of 2011, Georgia Conservatives in Action publicly endorsed Chris Vaughn for U.S. Congress and issued a corresponding press release and in 2010, Georgia Conservatives in Action publicly endorsed Nathan Deal in the Georgia GOP Gubernatorial Runoff.**

   a. **What due diligence did you exercise in advance of contributing $2500 to Georgia Conservatives in Action?**

      Response: In exercising due diligence prior to my former campaign committee's donations, I reviewed the pertinent section of the Code of Judicial Conduct defining "political organization" and reviewed Georgia statutory authority regarding the disposition of campaign contributions, paying particular attention to O.C.G.A. § 21-5-33 (b)(1)(a), which expressly permitted contributions to a nonprofit organization. I also spoke personally with the representative of the organization who solicited the contributions and verified that the organization was duly incorporated as a nonprofit "social welfare" organization under Section 501(c)(4) of the Internal Revenue Code. As such, I was aware that the organization was an entity that was "primarily engaged in promoting in some way the common good and general welfare of the people of the community," *see* 26 C.F.R. Section 1.501(c)(4)-1(a)(2), and that they did not meet the definition of a "political organization" under the Code of Judicial Conduct. I was also aware that 501(c)(4) organizations were permitted to endorse candidates under the tax code. That I was familiar with the organization's tax exempt status at the time, is evidenced by my notation of "501 C4 Donation" on the April 6, 2012 check and my notation of "nonprofit contribution per: O.C.G.A. § 21-5-33(b)(1)(A)" on the September 27, 2012 check.

   b. **How did you come to be associated with this organization?**

      Response: I have personally known the co-founders of this organization for nearly fifteen years – well before the existence of GCIA, which was incorporated as a Georgia nonprofit corporation in 2009. I have known them to be active in local and state government public policy matters, educating the public on matters of public policy and encouraging others to help them in advocating for issues of importance to them and to South Georgia. The Mission Statement of GCIA is to "educate, motivate and activate grass roots conservatives to have an effective voice in government," and that is what I understood the group to do.

   c. **What Georgia Conservatives in Action events or fundraisers did you attend as a sitting judge or candidate for judge?**

      Response: To the best of my recollection, I attended the organization's Economic Development Summit in Waycross, Georgia in April of 2012 and the organization's meeting in Waycross, Georgia in October of 2010 where Wayne LaPierre spoke on "Defending America's Future." The organization's co-founders have personally

informed me that these events were not fundraisers. There may have been other events that I attended that I do not recall, although I have checked with the organization and they have no records of my attendance at any other GCIA events.

d. Why did you decide to financially support Georgia Conservatives in Action?

Response: One of the organization's co-founders asked if I could make two corporate donations to this organization to help with the costs associated with two specific events.

10. **According to Canon 2 of the Code of Conduct for United States Judges, "A judge should avoid impropriety and the appearance of impropriety in all activities."**

a. In 2012, as a sitting state appellate court judge, did you attend a fundraiser in support of Tyler Harper, then-candidate for State Senate from Georgia's 7th District?

Response: Yes.

b. Do you think your attendance may have given the appearance of an endorsement for then candidate Tyler Harper?

Response: In January of 2012, I attended a fundraiser for State Senator-elect Tyler Harper. At the time I attended, I fully intended to run for re-election to the Court of Appeals. Therefore, I was authorized to attend this event or any fundraiser for any other political candidate and did so with a full understanding that the attendance was authorized by the Code of Judicial Conduct and the Advisory Opinions stated therein.

Specifically, Canon 7(A)(2) of the Georgia Code of Judicial Conduct provides that "[j]udges holding an office filled by public election between competing candidates, or candidates for such office, may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election." Relying in part on this provision, the Judicial Qualifications Commission has ruled in a number of Advisory Opinions that elected judges and judicial candidates may attend fundraisers for partisan candidates. *See, e.g.,* Opinion No. 90 (October 24, 1986) (judicial candidate may attend fundraisers for partisan candidates); Opinion No. 124 (July 29, 1988) (if a judge has made the decision to run for election or re-election to office, he is a candidate and thus may attend a fundraising event for a partisan, non-judicial candidate if he is acting on his own behalf and the purpose of his attendance is to encourage individuals to vote for him in a future election); Opinion No. 203 (Dec. 15, 1995) (in attending a fundraising event for another candidate, a judge is not making a prohibited public endorsement) adding that "[t]he Commission makes this determination in recognition of the fact that most judges in this state must themselves periodically seek election to public office, and any other conclusion might be viewed as an unreasonable and unnecessary burden on the political process."

I am confident that my participation in attending fundraisers for any partisan or nonpartisan candidate while I have been a judge does not constitute a public endorsement of a candidate for public office in violation of Canon 7A. This conclusion is expressly supported by the provisions of Canon 7A(2) of the Georgia Code of Judicial Conduct and Advisory Opinion No. 203 (Dec. 15, 1995).

c. Do you believe your attendance at a candidate fundraising event would avoid "the appearance of impropriety in all activities" under the Federal Code of Conduct?

Response: It would not. It would also violate Canon 5 of the Code of Conduct for United States Judges, which prohibits attendance at a dinner or other event sponsored by a political organization or candidate. While I currently abide strictly by the Georgia Code of Judicial Conduct, which expressly permits attendance at fundraisers in recognition of the fact that judges in Georgia are elected, if confirmed, I would abide strictly by the Code of Conduct for United States Judges.

d. Do you believe your attendance at a candidate's political fundraiser would comply with the spirit of the Code of Conduct?

Response: As noted above, it would not comply with the spirit or with the letter of Canon 5 of the Code of Conduct for United States Judges, while it does comply with the Georgia Code of Judicial Conduct. If confirmed, I would abide strictly with the letter and spirit of the Code of Conduct for United States Judges.

e. Have you attended any other fundraisers while serving as a judge, running for election as a judge or since you have been nominated to be a federal judge?

Response: As expressly permitted by the Georgia Code of Judicial Conduct, I have periodically attended various partisan and nonpartisan candidate fundraisers throughout my ten-year judicial career. I have not done this regularly. Since I was nominated to be a federal judge, I attended one fundraiser for a candidate running in a nonpartisan election for Superior Court Judge in Atlanta. In each instance, I fully and strictly complied with the Georgia Code of Judicial Conduct and the Judicial Qualifications Commission Advisory Opinions which authorize judges to attend fundraisers.

Senator Grassley
Questions for the Record

Michael Boggs,
Nominee: U.S. District Judge for the Northern District of Georgia

1. **During your hearing, I asked a few questions that you had already touched on in your earlier answers. I'd like to give you the opportunity to answer a few of them now, in writing.**

   a. **There may be some concern that your personal views on abortion may influence your ability to follow precedent as a judge. First, what is your commitment to following precedent, if confirmed?**

      Response: As a trial and appellate court judge for the last ten years, I have faithfully followed precedent in all cases that have come before me. If confirmed, I would remain steadfast in my commitment to follow the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals in all cases, including the decisions in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

   b. **Please describe what you see to be the differences in responsibility of a policy maker and a judge regarding the topic of abortion.**

      Response: My duty as a judge and the principle that has guided me during my judicial career has been faithfulness to the rule of law and the doctrine of *stare decisis*, being ever mindful of the limited role of the judiciary and of the fact that judges should not be policy makers. I have been committed to faithfully applying precedent during the entirety of my ten-year judicial career as both a state trial court and appellate court judge, during which time I have disposed of over 14,000 matters. If confirmed, I remain committed to this guiding principle with respect to matters involving women's reproductive rights as well as other matters that may come before me. On the other hand, policy makers are not bound by precedent, and by virtue of their office, they are likely to express the will of their constituency on matters of public policy including, where they deem appropriate, on matters regarding the topic of abortion.

   c. **Do you hold any views regarding abortion, religious or otherwise, that would make you unable to discharge your duties faithfully as a United States District Judge?**

      Response: No.

2. **Could you foresee a scenario in which a case dealing with abortion came before you where you ruled to uphold an abortion law?**

Response: Regardless of whether I was presented a case that involved a constitutional challenge to an abortion restriction or a case that involved a constitutional challenge to a law protecting abortion, I would faithfully apply the law to the facts of the case in a fair and impartial manner, giving complete deference to the binding precedent of the United States Supreme Court decisions in *Roe* and *Casey*, as well as any other subsequent decisions of the United States Supreme Court or the Eleventh Circuit Court of Appeals on that issue.

3. **In February 2013, you gave an interview to the Atlanta Constitution Journal where you talked about imposing a 10-year mandatory sentence on a 17 year old that you thought was unjust, but you did it because the law required you to. Please describe how you came to your decision in weighing what you believed was fair with what the law required you to do.**

Response: The specific case about which I was speaking was *State v. Wesley*, a 2006 criminal case over which I presided as a trial judge. Mr. Wesley was a 17-year-old African-American high school student with no prior criminal record when he was indicted along with two older acquaintances for his role as the getaway driver in the armed robbery of a convenience store owner at his home. Mr. Wesley did not possess a weapon, did not enter the victim's home, received no money, and called the police and reported the crime within hours after it happened. He cooperated with the police and gave statements against his co-defendants. The other defendants had substantial criminal histories and possessed weapons during the armed robbery of the victim. Mr. Wesley refused to accept a plea to robbery as a lesser-included offense, which would have avoided the imposition of a minimum mandatory sentence, instead proceeded to trial, and was convicted. In accordance with Georgia law, and consistent with the range of sentencing available, I imposed a minimum mandatory period of incarceration of ten years. Thereafter, one of the co-defendants pled guilty to robbery and was sentenced to five years in prison pursuant to a plea agreement. The third defendant, the other party with a weapon, was subsequently tried before a jury and acquitted. I granted Mr. Wesley's motion for a new trial on the general grounds of manifest injustice, and he subsequently pled guilty to robbery. Pursuant to the plea agreement, he was immediately eligible for parole. I also permitted Mr. Wesley to enter the plea as a first offender which permitted him to avoid the collateral consequences of a felony conviction. Judges must decide cases based on a faithful obligation to follow the law, wherever it leads, and that is what I did in this case.

4. **Without going into specific views you might personally hold, as a state court judge, have you ever made a ruling that follows the law or precedent that you have personally disagreed with? If so, will you briefly describe how you were able to put aside your own views and rule according to the law?**

Response: As I discussed in response to question 3, I have been obligated to impose some mandatory sentences in felony criminal cases that I may have personally disagreed with, however, my job as a judge and the principle that has guided me during my career has been to be faithful to the rule of law and the doctrine of *stare decisis*, being ever mindful of the limited role of the judiciary and that judges should not be policy makers. I think that a

review of my ten-year judicial record is the best evidence of my commitment to separating any personal views I may have from my role as an impartial decision maker. Since first offering myself for judicial office in 2004, I have fully understood, respected, and appreciated that as a judge, my duty is to follow the law regardless of any personal opinions I may have, and I believe my record demonstrates that I have done this.

5. **During your hearing, Senator Blumenthal asked a question where he said that you had indicated that the right of privacy was not in the Constitution. You answered that you did not recall ever having said that. For the record, what is your understanding of the Constitutional right to privacy?**

Response: The Supreme Court has stated that "[w]hile there is no 'right of privacy' found in any specific guarantee of the Constitution, the Court has recognized that 'zones of privacy' may be created by more specific constitutional guarantees and thereby impose limits upon government power. See *Roe v. Wade*, 410 U.S. 113, 152-153 (1973)." *Paul v. Davis*, 424 U.S. 693, 712-713 (1976). And, "[i]n *Roe* the Court pointed out that the personal rights found in this guarantee of personal privacy must be limited to those which are 'fundamental' or 'implicit in the concept of ordered liberty' as described in *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)." *Id.* Activities that fall within this definition include "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education. In these areas it has been held that there are limitations on the States' power to substantively regulate conduct." *Id.* Privacy interests have also been found to exist in connection with the First Amendment's protection for freedom of assembly, *Bates v. City of Little Rock*, 361 U.S. 516, 522-523 (1960), and in connection with the Fourth Amendment's guarantee against unreasonable searches and seizures. *United States v. Jones*, 132 S. Ct. 945, 950-951 (2012). If confirmed, I would apply these precedents and all other binding precedent of all cases of the United States Supreme Court and the Eleventh Circuit Court of Appeals on the issue of the constitutional right to privacy.

6. **During your hearing, several Senators asked you about a vote on an amendment that you took regarding abortion doctors' privacy. You said that you were not aware of violence against doctors at the time of the vote. To clarify, did you mean that you were not aware of violence against abortion doctors at all when you took the vote, or that issue did not occur to you at the time when you were voting because you were considering other factors, such as a woman's right to know information about her doctor?**

Response: Thank you for the opportunity to clarify my testimony. What I meant in my testimony to the Committee was that at the time the amendment was passed by a voice vote on February 8, 2001, to the time I later cast the recorded vote for the amendment, during the busiest day of the legislative session, I did not consider the issue of violence against abortion doctors. Although I understand from recent press reports that the issue of violence against abortion doctors was debated on the House floor that day, I do not recall that debate. I was considering the bill as a whole, the purpose of which was to educate and make available to the public information concerning a physician's disciplinary histories and malpractice final judgments. As I think back on this bill, the only thing I recall being

discussed, and the issue that garnered all of the attention, of which I was aware, was the question of whether and how malpractice judgments and settlements would be disclosed.

By my statement to the Committee, I did not intend to convey categorically that I was generally unaware of claims of violence against physicians that perform abortions. I would have been aware of some of the cases of violence at that time, although I do not recall specifically hearing any of these concerns raised relative to this amendment. I should have considered this at the time the amendment was presented and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

7. Please describe the work you've done with the adult felony drug court program.

Response: In 2008, while serving as a trial court judge in the Waycross Judicial District, I became interested in developing a drug court program after observing that a large proportion of criminal defendants with whom I was dealing were in the criminal justice system by virtue of their substance abuse and/or mental health issues. Georgia's felony recidivism rate was roughly 30%, and my personal experience with sentencing felony offenders was that, absent addressing their substance abuse issue, they were less likely to successfully reintegrate in the community and become productive members of society. My research likewise demonstrated that many of these offenders were non-violent offenders. National evidence demonstrated that drug courts were successful in greatly diminishing the recidivism rates of these offenders and doing so at a lower cost to taxpayers. The program required the participants to complete their GED, obtain a job, regularly attend substance abuse counseling, attend frequent court sessions, and remain drug free. Upon successful completion of the program, the offender's felony case would be dismissed and the offender would have no felony criminal record.

I felt compelled to do something based on the revolving criminal justice door that I had seen in my few years on the bench, and felt particularly concerned by the disproportionate numbers of African-Americans who were caught in the criminal justice cycle due to their addiction to drugs. Soon after starting the program, I was appointed by Chief Justice Leah Ward Sears to serve as a member of the Accountability Courts Committee of the Judicial Council of Georgia where I assisted in the effort to expand drug courts throughout the state, and where I advocated for the adoption of standardized drug court rules and best practices. In 2011, I was appointed by Chief Justice Carol W. Hunstein to serve on the Governor's Special Council on Criminal Justice Reform for Georgians where we made recommendations to the General Assembly to further improve Drug Courts in Georgia.

I served as the presiding drug court judge in the Waycross Judicial Circuit until 2012. During this time I was responsible for all matters pertaining to the program, including the writing of the Participant Handbook and the Operations and Policy Manual. I recruited the local Community Service Board to fill administrative and counseling staff positions, negotiated drug screening equipment contracts and office leases, and developed all necessary court forms. I built the collaborative team framework with the public defender, district attorney, state probation, and local law enforcement agencies including the drafting

of memoranda of understanding required by the Department of Justice. I was also involved in all community outreach including building relationships with prospective employers, instituting a private drug screening program for local governments, and coordinating GED program providers. I wrote all state and federal grant applications and was responsible for the implementation of and compliance with these grants. My duties included managing the program budget and the completing of all necessary matters pertaining to the court's successful application for nonprofit tax status with the Internal Revenue Service. I found that drug courts can be an effective tool for certain offenders in reducing recidivism, putting families back together, and giving offenders an opportunity to regain their lives.

8. In your questionnaire you gave some examples of legislation that you sponsored. Will you please elaborate on your efforts in these areas:

a. Strengthening laws combating sexual exploitation of children and internet child pornography?

Response: Protecting children from those who would abuse or exploit them was an overarching goal of mine when I was in the Georgia General Assembly. To this end, I authored House Bill 462, the "Child Protection Act" in 2003. I consider this to be the most significant legislation that I authored or co-authored during the entirety of my legislative service and am very proud to have helped to improve the safety of Georgia's children through this Act. The Act broadened the definition of pimping to target those who were pimping minors and criminalized the act of transporting a person for the purpose of prostitution. The Act changed the description of the offense of sexual exploitation of children and made substantial changes to the definitions and penalties for computer pornography involving a child. The Act also removed a possible loophole in existing Georgia law that had been recognized in similar federal statutes when distributors of child pornography may have been able to escape prosecution by altering child pornography through "morphing" technology. The Act also brought Georgia in line with federal law by upgrading the crime of possession of child pornography from a misdemeanor offense to a felony. The Act also strengthened Georgia law regarding the use of the internet to solicit a child to commit an illegal sexual act.

b. Expanding and improving the law on criminal offenses against minor victims?

Response: While House Bill 462, the "Child Protection Act," dealt with strengthening criminal statutes regarding the sexual exploitation of children and computer pornography involving a child, I also included within that legislation language to improve the law on criminal offenses against minor victims. Through House Bill 462, I sought to strengthen Georgia's statute on sexual battery by proposing that "a person convicted of the offense of sexual battery against any child under the age of 16 years shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years." In addition, I authored House Bill 463 which concerned the state sexual offender registry. This legislation specified that creating, publishing, selling or possessing any material depicting a minor or a portion of a minor's body engaged in sexually explicit conduct was a criminal

offense and mandated reporting under the state sex offender registry. I am pleased that this legislation was passed and am hopeful that it has made Georgia's children safer.

c. Updating the State Sexual Offender Registry requirements?

Response: I authored House Bill 463 in 2003 which included several changes to Georgia's sex offender registry. Specifically, the bill mandated more timely reporting of offenders to county sheriffs, mandated reporting of changes in residence and employment addresses, required offenders to notify sheriffs in the event of a move to a new state, and required that the offender registration notification form be read and signed at the time of registration. Offenders were also required to report in person to the sheriff of their county of residence within ten days of the anniversary date of the original registration to be photographed. Protecting children from sex offenders was an important cause for me as a state legislator. I worked to improve the State Sexual Offender Registry, and offender's obligations thereto, in order to provide the general public with more timely and accurate information about the offenders living in their area so that they could more adequately protect their children.

9. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?

Response: Prior to becoming a state judge, I had the occasion to appear before many state and federal judges during my career and gleaned much from watching these jurists. The characteristics that I have seen in other judges that I have endeavored to avoid throughout my judicial career, and those that I would hope to avoid if confirmed, include judges who display a poor, intolerant, and impatient temperament, judges who display a poor work ethic and are unprepared for matters that appear before them, judges who interject bias or personal feelings into judicial decisions, judges who do not treat everyone before them equally and with respect and dignity, and judges who unreasonably delay decisions in cases. During the entirety of my ten-year judicial career as a trial and appellate court judge, I have endeavored to avoid these characteristics and believe that I have done so successfully.

10. What is the most important attribute of a judge, and do you possess it?

Response: Most importantly, judges should respect the limited role of the judiciary in our democracy and respect the rule of law by deciding each case through a fair, impartial, and unbiased application of the binding precedent to the relevant facts. Judges should not prejudge cases and be diligent in their duties, be fair, impartial, unbiased, patient, and open-minded, and should treat all parties equally and with respect, civility, and dignity. Judges should be disciplined to decide only those issues properly presented for consideration. These self-imposed disciplines are paramount to the maintenance of the balanced system of government envisioned by the Founding Fathers as they ensure public confidence in a justice system grounded in fairness and equity. I feel that I possess these attributes and that my work as a trial and appellate court judge for the last ten years demonstrate my personal commitment to these attributes.

11. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: Judges exist to do justice. In many instances, a litigant's only experience with the judicial system may be one case – his or her own. Everything they think or know of the judicial system may well be based upon that one case. As such, it is important that judges exercise the appropriate temperament in dealing with litigants, lawyers, and the general public. Public confidence in a fair, impartial and unbiased judicial system is paramount to our system of democracy and can be strengthened through the exercise of appropriate judicial temperament. The appropriate temperament of a judge includes that a trial judge should be patient, impartial, and fair, giving each litigant a full and fair opportunity to be heard. Judges should be civil and treat each litigant equally and with dignity and respect. I believe that I possess these attributes and that I have consistently applied them during my judicial career over the last ten years.

12. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I am committed to being faithful to my oath and to following the binding precedents of higher courts giving them full force and effect regardless of whether I agree or disagree with the precedent. I believe that my judicial career as a trial and appellate judge demonstrates my faithfulness to following the precedent of higher courts.

13. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

Response: Yes.

ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

Response: It is my understanding that he is referring to same-sex marriages that a State has recognized as lawful.

iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes. As I understand the holding in *Windsor*, it applies to Section 3 of the Defense of Marriage Act's prohibition against federal recognition of same-sex marriages that a State has recognized as lawful.

iv. **Are you committed to upholding this precedent?**

Response: If confirmed, I would faithfully follow *Windsor*, and any other relevant precedent from the United States Supreme Court and Eleventh Circuit Court of Appeals, on this issue as with any issue.

b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The entirety of all majority opinions of the Supreme Court are binding precedent and should be faithfully followed by lower court judges unless specifically overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I would faithfully follow the entirety of the majority opinion in *Windsor*, and any other relevant precedent from the United States Supreme Court and Eleventh Circuit Court of Appeals on this, or any other issue.

c. **Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

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[2] *Id.* 2689-2690.
[3] *Id.* 2691.

Response: Yes. The entirety of all majority opinions of the United States Supreme Court are binding precedent and should be faithfully followed by lower court judges unless specifically overruled by later United States Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I would faithfully follow the entirety of the majority opinion in *Windsor*, and any other relevant precedent from the Supreme Court and Eleventh Circuit Court of Appeals on this, or any other issue.

d. **Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The entirety of all majority opinions of the Supreme Court are binding precedent and should be faithfully followed by lower court judges unless specifically overruled by later Supreme Court decisions.

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I would faithfully follow the entirety of the majority opinion in *Windsor*, and any other relevant precedent from the Supreme Court and Eleventh Circuit Court of Appeals on this, or any other issue.

e. **Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]**

i. **Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes. The entirety of all majority opinions of the Supreme Court are binding precedent and should be faithfully followed by lower court judges unless specifically overruled by later Supreme Court decisions.

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

ii. **Will you commit to give this portion of the Court's opinion full force and effect?**

Response: Yes. If confirmed, I would faithfully follow the entirety of the majority opinion in *Windsor*, and any other relevant precedent from the United States Supreme Court and Eleventh Circuit Court of Appeals on this, or any other issue.

14. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: When confronted with a case of first impression, I would apply the same analysis that I have used throughout my judicial career. First, I would study and apply the text of the applicable statute, regulation, or constitutional provision at issue and apply the canons of statutory construction to determine whether the provision's meaning is clear and unambiguous. If the meaning is clear and unambiguous, I would apply the provision as written. If the plain meaning is not clear, then I would apply the same canons of construction and look to analogous precedents from the United States Supreme Court and the Eleventh Circuit Court of Appeals for guidance. If additional assistance were needed, I would look to persuasive authority of the other jurisdictions within the United States for guidance.

15. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: It is a judge's job to render decisions consistent with controlling precedent regardless of personal beliefs they may have, and I do abide by this. I would apply the binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals without regard to whether I believed the court erred in the decision. I have faithfully followed binding precedent throughout my judicial career as a trial and appellate judge, and I would continue to do so if confirmed as a district judge.

16. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes enacted by Congress are presumed to be constitutional and federal courts should find them to be unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). In the rare circumstance when I would be called upon to consider the constitutionality of a statute, I would apply the standards established by the United States Supreme Court and the Eleventh Circuit Court of Appeals in my analysis.

17. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No. It is not appropriate for judges to rely on foreign law or the views of the "world community" in determining the meaning of the United States Constitution.

18. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I have served as a state legislator and have great respect for the distinct and markedly different roles of the legislative and judicial branches of government. Judges should not be policy makers. I have been a judge for ten years on both the trial and appellate courts in Georgia. My judicial career, and the decisions I have rendered, demonstrates that my decisions will be grounded in precedent and the text of the law and equally evinces my respect for the rule of law and the limited role of judges in our democracy. I have never allowed my personal views, political ideology or other motivation to guide the disposition of any case with which I have been involved. I understand that if confirmed as a district court judge, my duty will be to decide cases fairly and impartially, without political ideology and without bias, by faithfully and uniformly applying binding precedent to the properly presented facts before me. If confirmed as a district judge, I would continue this strict adherence to the rule of law and continue to remain grounded in precedent and the text of the law alone in reaching my judicial decisions.

19. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: My job as a judge, and the principle that has guided me during my ten-year judicial career, is to be faithful to the rule of law and the doctrine of *stare decisis*, being ever mindful of the limited role of the judiciary and that judges have no role in making public policy. The best evidence of the type of judge I will be is the type of judge that my ten-year judicial record reflects that I am. I think that a review of my judicial record demonstrates that I am committed to separating my personal opinions from my job as an impartial decision maker and is the best evidence of my commitment to treating all who come before me equally, respectfully, impartially and without bias. A review of my opinions demonstrates that I have been faithful to the rule of law and that I have decided cases objectively, impartially and without bias. If confirmed, I would continue to abide by the principle of treating everyone equally and fairly under the law and deciding cases without any regard to any personal views I may have.

20. If confirmed, how do you intend to manage your caseload?

Response: I currently serve on one of the busiest intermediate state appellate courts in the United States and previously served as a state trial court judge in a very large and busy judicial circuit. I have experience managing a busy caseload. If confirmed, I would take an active role in managing my caseload by setting reasonable but firm scheduling orders, and utilizing court personnel and magistrate judges to facilitate the efficient resolution of

pretrial matters. My experience as a former trial judge has taught me that judges should work hard, be prepared, and actively engage the lawyers in their cases. This means being available to handle discovery disputes or for unplanned conferences as necessary. I would continually monitor my cases in an effort to ensure that the public's access to the court is not affected by caseload issues and that matters are resolved as efficiently as possible.

21. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: As a former trial court judge with jury trial dockets in four counties, I have experience in managing a litigation caseload. Judges have a role in controlling the pace and conduct of litigation and in ensuring cases move through the system in a manner that is fair to the litigants and reasonable for the lawyers. Efficient case management by the judge is imperative in ensuring the public's reasonable access to the courts while building public confidence in our judicial system as an efficient means of resolving disputes. As I have in the past, I would use my strong work ethic to personally engage in the cases assigned to me, and I would set firm yet reasonable scheduling orders and make myself available to counsel as necessary to ensure the pace of litigation fulfills the courts obligation to provide an efficient means for dispute resolution.

22. **As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: As an appellate court judge, I decide cases beginning with a thorough review of the record submissions of the parties. I review pertinent and applicable decisions from the Georgia Supreme Court and the Court of Appeals of Georgia, and I review the jurisdictional posture of the case and the applicable standard of appellate review. When available, I also consider the oral arguments of the parties. Thereafter, I apply the facts of the case in a fair, unbiased, and impartial manner to the applicable law in reaching a decision that is consistent with binding precedent. Ultimately, all of my decisions are based on a faithful adherence to the rule of law and the doctrine of *stare decisis* coupled with a faithful application of our appellate standard of review in each case.

23. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

24. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on May 20, 2014 and prepared my responses on May 20-27, 2014. I submitted my responses to the Department of Justice Office of Legal Policy for review. I then finalized my responses and authorized their transmittal to the Committee.

25. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record from Senator Dianne Feinstein for Judge Michael P. Boggs

May 20, 2014

(1) **An article you submitted to the Committee from the *Blackshear Times* and dated Wednesday, January 7, 2004 states that you "told the Blackshear Rotary Club Tuesday" that you would "run for Superior Court Judge." When did you first become a candidate for Superior Court Judge? Did you become a judicial candidate on or before Tuesday, January 6, 2004?**

Response: Yes. Pursuant to the Georgia Code of Judicial Conduct I became a judicial candidate when I received my first campaign contributions during the first few days of January 2004.

(2) **When a state constitutional amendment to ban same-sex marriage came before the Georgia House in February 2004, you were the first to rise and speak in support.**

a. **Why did you vote for this amendment?**

Response: When I voted in favor of this amendment over ten years ago as a Democratic state legislator, I was personally opposed to same-sex marriages. The overwhelming majority of my constituents agreed with this position at that time as evidenced by the fact that when the Constitutional Amendment was presented to the public for a vote in November of 2004, 90% of the constituents from my legislative district who voted, voted in favor of the proposed Amendment. This issue looked different to me ten years ago when I was serving in a very different role as a state legislator than it looks now, especially after having been a judge for the last ten years.

b. **Why did you choose to speak on it and to be the first speaker to rise in support of the measure, given that, as reflected in your questionnaire responses, you rarely spoke on the House floor?**

Response: I spoke on this resolution because the Democratic Speaker of the House asked me to speak on it, just prior to the call of the resolution for debate. Absent this request, I would not have spoken on the resolution. The Speaker indicated to me that he decided to ask me to speak and to call me as the first speaker to demonstrate that there was support for this resolution within the state from among rural Democrats. Forty-eight House Democrats supported the resolution. It passed by three votes.

c. **In your remarks, you said: "I want to stand before you today and tell you that it's my opinion, both as a Christian, as a lawyer, and as a member of this House that it's our opportunity to stand up in support of this resolution. I think it's important to recognize the dangers that we face with respect to activist judges, with respect to mayors who are operating in derogation of current state law."**

i. **The Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), found Section 3 of the federal Defense of Marriage Act unconstitutional. Do you believe the Supreme Court majority in *Windsor* was "activist"?**

Response: Judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully applying precedent whether it be *United States v. Windsor*, 570 U.S. 12 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decisions of the United States Supreme Court or the Eleventh Circuit Court of Appeals. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally, and with respect and dignity.

ii. **Numerous courts have applied *Windsor* to conclude that states' bans on same-sex marriage or on recognition of same-sex marriages from other states are unconstitutional. Do you believe that any judge who decides, under the Constitution of a state or the United States, that gay and lesbian Americans have a right to marry or to have a marriage recognized is an "activist judge"?**

Response: I would define "judicial activism" as the act of judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent. I have no reason to believe that any judge who decides, under the Constitution of a state or the United States, that gay and lesbian Americans have a right to marry or to have a marriage recognized is "activist." Judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully applying precedent whether it be *United States v. Windsor*, 570 U.S. 12 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decisions of the United States Supreme Court or the Eleventh Circuit Court of Appeals. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally and with respect and dignity.

d. **In your remarks, you said: "[I]n 1998, the Georgia Supreme Court [in *Powell v. State*, 510 S.E.2d 18 (1998)] struck down Georgia's sodomy laws and I found it interesting that the lone dissent in that case by Justice Carley speaking with respect to the state regulating the private sexual conduct of consenting adults, that Justice Carley indicated quote that 'just because, that, because this right is not in the context of, or in the text of the Constitution, its boundaries are necessarily unclear.'"**

i. **Did you believe in 2004 that the six Georgia Supreme Court Justices in the majority in *Powell* were "activist judges"? Do you believe that today?**

Response: When I made these statements as a state legislator in 2004, I disagreed with the opinion. The *Powell* decision is binding precedent. As a Judge of the Court of Appeals, I would faithfully apply the *Powell* majority decision. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally, and with respect and dignity.

ii. **In 2004, did you agree with Justice Carley's dissent in *Powell*? Do you still agree with it today?**

Response: The *Powell* decision is binding precedent. As a Judge of the Court of Appeals, I would faithfully apply the *Powell* majority decision. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally and with respect and dignity.

iii. **In your statement, you reference Justice Carley's dissent, stating: "because this right is not in the context or, or in the text of the Constitution, its boundaries are necessarily unclear."**

1. **I could not find the quote you reference in Justice Carley's dissent. What specific part of Justice Carley's dissent did you intend to quote from or otherwise rely on?**

   Response: I do not recall where that quote would have come from. I have re-read Justice Carley's dissent to answer these questions and am not sure what I might have been alluding to back then. I had not been prepared to speak on the amendment and I likely misspoke or misremembered the dissent or I may have used materials that others provided to me that were inaccurate.

2. **What is your approach to applying a constitutional right or doctrine that is well-established in judicial precedent but that does not appear in the text of the Constitution?**

   Response: If confirmed, and if a case came before me presenting a constitutional question, I would first review cases from the United States Supreme Court and the Eleventh Circuit Court of Appeals and faithfully apply this precedent to the facts of the case. I would conduct additional research of persuasive appellate and trial court decisions from other jurisdictions within the United States and the Eleventh Circuit if necessary.

iv. **Justice Carley's dissent quoted from and repeatedly cited *Bowers v. Hardwick*, 478 U.S. 186 (1986). Prior to your remarks, Supreme Court**

decided *Lawrence v. Texas*, 539 U.S. 558 (2003), which found: "*Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. *Bowers v. Hardwick* should be and now is overruled."

1. **In 2004, did you believe that *Bowers* was rightly decided? Do you believe that today?**

   Response: Regardless of my views then or now, I would be bound by the majority opinion in *Lawrence*. It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for district court judge, to express my personal opinion about whether *Bowers* was rightly decided in 2004 or whether I believe that today. Judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully applying precedent. *Lawrence v. Texas*, 539 U.S. 558 (2003) is binding precedent and if confirmed, I would faithfully follow this decision of the United States Supreme Court and any decision of the Eleventh Circuit Court of Appeals on this, or any other issue. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally and with respect and dignity.

2. **Why did you rely on a dissent that itself repeatedly relied on a decision that since had been overruled?**

   Response: Respectfully, when I made this floor speech ten years ago in my capacity as a state legislator, the issue of same-sex marriage looked different to me than it does today in my capacity as a judge who is and would continue to be bound by precedent when deciding cases. If confirmed, I am committed to faithfully applying precedent whether it be *United States v. Windsor*, 570 U.S. 12 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decisions of the United States Supreme Court or the Eleventh Circuit Court of Appeals. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally, and with respect and dignity.

3. **Have you ever believed, and do you believe today, that Justice Scalia's dissent in *Lawrence* was correct?**

   Response: Judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully applying precedent. The majority opinion in *Lawrence v. Texas*, 539 U.S. 558 (2003) is binding precedent and if confirmed, I would

faithfully follow this decision. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally, and with respect and dignity.

4. **Do you believe the Justices in the majority in *Lawrence* were "activist judges"? Do you believe *Lawrence* is an "activist" opinion?**

   Response: The majority opinion in *Lawrence v. Texas*, 539 U.S. 558 (2003) is binding precedent, and if confirmed, I would faithfully follow this decision.

e. **Your questionnaire supplemental documents include an article in the *Waycross Journal-Herald* dated July 8, 2004. This article recounts a forum in which you spoke as a judicial candidate. According to the article, you stated: "I was born in Ware County and have tried in my career to improve the community. I ask you to reflect on my career. I have worked for the community because I care about it. I believe you should elect judges who are active in the community. I am proud of my record. You don't have to guess where I stand – I oppose same-sex marriages . . . . I have a record that tells you exactly what I stand for. I believe in separation of powers and believe making laws should be left to the legislature."**

   i. **Was conveying your position on an issue in this sort of manner during a judicial campaign a frequent practice for you in 2004? What about during your later judicial campaigns?**

      Response: No. Making statements such as this was not a frequent practice for me in 2004 and was not a practice at all in my later judicial campaigns and I regret these comments. These comments were made when I was still a state legislator, but running for judicial office, and I believe that I could and should have done a better job separating the roles of each as the job of a judge is wholly different than the job of a legislator.

   ii. **For what reason did you convey your position on the issue of same-sex marriage to voters when you were campaigning for judicial office?**

      Response: I have no idea why I would have said that other than, like any other candidate for public office, I was running based on my record of community and legislative service. Given the jurisdiction of the court for which I was seeking office, this issue was not likely to come before me. Looking back, I regret that I was not more articulate and wish that I had better explained myself and the role of the office which I was seeking more artfully. This comment was made while I was running for judge, but also while I was still a

state legislator, and I should have done a better job of separating the roles of each as the job of a judge is wholly different than the job of a legislator.

iii. **Did you ever convey a personal, legislative, or legal position on the issues of abortion, reproductive rights, the Second Amendment, or the Georgia state flag when you were campaigning for elective judicial office?**

Response: Not to the best of my recollection.

iv. **Can you assure me that this article reflects the only time during any race for elective judicial office in which you conveyed your personal or legislative position, or legal opinion, on a controversial legal or constitutional issue?**

Response: To the best of my recollection, this is the only time I have ever mentioned any opinion whatsoever on any legal or constitutional issue controversial or otherwise during any race for elective judicial office. I am steadfast in recognizing my obligations to refrain from doing so as a judge pursuant to the Georgia Code of Judicial Conduct and have always endeavored to exceed the obligations imposed on me in this regard.

(3) You sponsored bills related to parental notification and abortion in the 2003-2004 regular session of the Georgia Legislature. H.B. 466 would have eliminated a "person standing in loco parentis" from the statutory scheme, limiting notification only to actual parents or legal guardians. It also would have required that the minor "be accompanied by a parent or guardian who shall show" government-issued identification. None of these provisions contains an exception for a pregnancy resulting from rape or incest.

a. **Why did you sponsor these measures? What did you intend them to accomplish?**

Response: I co-sponsored these measures both because I considered myself to be a pro-life legislator and I believed that it was important to the very pro-life constituency I was elected to represent. H.B. 466 was authored by a Democrat and the first six co-signors were rural Democratic members of the Georgia House of Representatives. This bill sought to amend Georgia's Parental Notification Statute, which was originally enacted in 1987. Since the time of this enactment, the law had not contained an exception for an unemancipated minor's pregnancy resulting from rape or incest.

The bill would have required the parent or guardian to accompany the unemancipated minor and listed the acceptable forms of identification. These forms of identification included "any document issued by a governmental agency containing a description of the person, the person's photograph or both, including, but not limited to, a driver's license, an identification card authorized under Code §§ 40-5-100 through 40-5-104

(identification cards for persons without driver's licenses) or similar identification card issued by another state, a military identification card, a passport, or an appropriate work authorization issued by the United States Immigration and Naturalization Service."

The bill left fully intact the judicial bypass procedure available for the unemancipated minor to receive the abortion without notice and consent from her parent or guardian. The other bill that I co-sponsored, H.B. 1597 was nearly identical to H.B. 466 but did not contain the "proper identification" provisions. Neither bill passed during my tenure. The substantive language was subsequently included nearly verbatim in H.B. 197, which passed in 2005, after my service in the legislature. This is the current law in Georgia now.

b. **Do you recall any instance in which you spoke or issued a statement in support of these measures, either on the floor of the House, in a legislative committee, in a political campaign, or in a campaign for judicial office?**

Response: To the best of my recollection, I never spoke publically or privately in support of these measures and did not speak on the floor of the House or in any Committee of the Georgia House or Senate in support of these bills. To the best of my recollection, I have likewise never spoken in support of these measures in any political campaign nor in any of my various campaigns for judicial office and have never issued a statement in support of these measures.

c. **Here is what I said on the Senate floor in 2006 about parental notification:**

"As a mother and a grandmother, I would argue that, in a perfect world, young women and their parents should communicate openly about all major decisions, including whether to terminate a pregnancy. And, in fact, many young women do involve a parent in these decisions. However, the reality is that not all young women live in a household where they can turn to their parents. Some young women face physical, sexual or emotional abuse from their parents; some families do not have open, supporting relationships. For these young women, they may be more comfortable confiding in an older sister, aunt, or a grandparent. Yet this bill would turn these trusted relatives into criminals if they helped her seek an abortion."

i. **Prior to sponsoring H.B. 466, did you consider its likely impact of on the young women and families I described in 2006?**

Response: I am very respectful of your position on the issue of parental notification and appreciate the concerns you raised regarding the potential impact of these laws on young women and families. At the time I co-sponsored the bill, I did so both because I considered myself to be a pro-life legislator and I believed that it was important to the very pro-life constituency I was elected to represent. Inasmuch as this bill was introduced over ten years

ago, I have no independent recollection of considering the concerns you raise although it is possible that I did and believed that such concerns were addressed by the judicial bypass procedure in the 1987 Parental Notification Statute that was not affected by the legislation.

ii. **Please characterize how you view the likely impact of this measure on those young women and their families, had it been enacted.**

Response: The provisions of H.B. 466 and H.B. 1597 were largely included within H.B. 197 which was passed by the Georgia General Assembly on March 4, 2005, and signed by the Governor on May 10, 2005. Consequently, the provisions of these measures are the current law in Georgia today. It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for a federal district court judgeship, to express my personal opinion about the likely impact of these measures on young women and their families or to otherwise state any personal opinion regarding current laws in Georgia.

iii. **Did you intend to criminalize the act of a grandmother, aunt, older sibling, or clergy member helping a minor through a very difficult, personal decision? What if the young woman had been abused by her parent or guardian?**

Response: The provisions of H.B. 466 and H.B. 1597 were largely included within H.B. 197 which was passed by the Georgia General Assembly on March 4, 2005, and signed by the Governor on May 10, 2005. Consequently, the provisions of these measures are the current law in Georgia today. It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for a federal district judgeship, to express my personal opinion about these measures or to otherwise state any opinion regarding current laws in Georgia. The bill left fully intact the judicial bypass procedure available for the unemancipated minor to receive the abortion without notice and consent from her parent or guardian.

d. **The reality is that large numbers of adults in our country lack government-issued identification. Some may be undocumented immigrants with American-born citizen children; others may be low-income or minority individuals; others may be grandparents who are the legal guardians of their grandchildren.**

i. **Prior to sponsoring H.B. 466, did you consider its impact on a young woman whose parent or legal guardian lacks government-issued ID? Please characterize how you view the likely impact of this measure on such young women, had the measure been enacted.**

Response: I am very respectful of your position on the issue of parental notification and appreciate the concerns you raised concerning the potential

impact on young women. Inasmuch as these bills were introduced over ten years ago, I have no independent recollection of considering the concerns you raise.

The provisions of H.B. 466 and H.B. 1597 were largely included within H.B. 197 which was passed by the Georgia General Assembly on March 4, 2005, and signed by the Governor on May 10, 2005. Consequently, the provisions of these measures are the current law in Georgia today. It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for a federal district judgeship, to express my personal opinion about these measures or to otherwise state any personal opinion regarding current laws in Georgia.

e. **Georgia provides a so-called "judicial bypass," under which a minor may "petition . . . any juvenile court in the state for a waiver of [the law's parental notification requirements]." Ga. Code Ann. § 15-11-112.**

   i. **Without divulging any person's private information, identity, or otherwise impacting any person's privacy or anonymity, please tell me whether you have heard or decided any case brought under this statute as a superior court judge and provide pertinent details of any such case.**

   Response: I have not. The judicial bypass provisions of Georgia's Parental Notification Statute provide for waiver petitions to be filed in the juvenile court, not the Superior Court, having jurisdiction over the minor.

   ii. **You stated during your hearing that you could recall one case arising under the parental notification law in which you sat on the panel as an appellate judge. In a manner that protects individual privacy, I would like a copy of the decision and to know what the situation was, how you handled the case, what factored into your thinking, and what the outcome was.**

   Response: The question presented in that case was whether the juvenile court erred in denying the petition of a seventeen-year-old to waive the statutory requirement that her parents or legal guardian be notified before she underwent a procedure to terminate her pregnancy. Our court has a very limited and constrained role in the review of these cases on appeal. The standard of appellate review by which we are bound demands that findings of fact made by a trial judge are reviewed by our court under the "any evidence" rule, under which a finding by the trial court supported by *any* evidence must be upheld. Additionally, the appeals court will not set aside the trial court's factual findings unless they are clearly erroneous and must give due deference to the opportunity of the trial court to judge the credibility of the witnesses.

The juvenile court concluded that the unemancipated minor was not mature enough nor well enough informed to make the decision to have an abortion in consultation with only her physician without notifying her parents. The evidence in the record showed that the minor and her son lived with her mother, she had never made a major decision without her parents' input, she did not demonstrate that she was informed about the abortion procedure beyond the most cursory information, and that the reason she did not want to tell her parents did not stem from any fear that they would abuse or harm her if they found out about the pregnancy. Under our appellate standard of review, we affirmed the judgment of the trial court because we could not say that the juvenile court judge erred in her decision to deny the petition as there was evidence in the record to support her conclusion. (A copy of the opinion is supplied.)

Please also describe any related decision or vote you took on whether to hear or rehear a case by the full Court of Appeals. *See* Ga. Code Ann. § 15-3-1.

Response: No motion for reconsideration was filed in this particular case. The case was decided by the three-judge panel without a dissent, and accordingly, this case was not submitted to the whole court pursuant to O.C.G.A. § 15-3-1 (c) (2).

(4) I would like to ask you about the amendment you supported to put the number of abortions performed by a doctor in the doctor's online physician profile.

This amendment was first offered on the House floor on February 8, 2001, when it was adopted without a recorded vote. An *Atlanta Journal Constitution* editorial from February 13, 2001 recounts that this occurred after a "lengthy debate" in which "opponents of a woman's right to choose --- state Reps. Brian Joyce (R-Lookout Mountain) and Bobby Franklin (R-Marietta) --- tried to add numerous anti-abortion amendments to the bill." You then voted for the bill.

On March 21, 2001, the bill returned to the floor of the House from the Senate. The Senate substitute version did not contain the controversial abortion language. Representative Franklin moved to re-insert it and then agree to the Senate substitute as amended. On this motion, you voted aye. The motion failed 69-86, and the Senate substitute was adopted without the abortion-related language 158-0.

a. **Why did you support this amendment?**

Response: At the time I voted for the amendment I did so both because I considered myself to be a pro-life legislator and I believed that it was important to the very pro-life constituency I was elected to represent. The amendment came up first in February of 2001 on the floor of the House and was passed without a recorded vote. I do not

recall this amendment nor any debate or discussion of it at that time. The matter was reintroduced again on the last day of the 2001 legislative session as an amendment to H.B. 156. The last day of the session is generally considered to be the busiest legislative day of the year. We convened at 10:00 a.m. and adjourned at midnight. The House journal for that day alone consists of 489 pages. Although I understand from recent press reports that the issue of violence against abortion doctors was debated on the House floor that day, I do not recall that debate. I do not remember having even heard of the amendment prior to the author presenting it on the floor of the House just prior to the final vote. To the best of my recollection, this amendment was never discussed in any Democratic caucus meeting I ever attended, I recall no correspondence from House Democratic leadership regarding the anticipated amendment at any time, and I do not recall discussing it on the floor of the House with any Democratic or Republican member. I am also certain that I did not speak to Democratic Party leadership about the safety concerns for doctors posed by this amendment nor did I even hear of such at the time. I did not co-sponsor this amendment and I never spoke to the author about this amendment.

This amendment was made to H.B.156, a bill sponsored by the House Democratic Majority Leader. This bill concerned the adoption of a "Patient Right to Know Act of 2001." The bill proposed to repeal certain confidentiality provisions regarding reports of disciplinary actions against persons authorized to practice medicine. The bill required the Composite State Board of Medical Examiners to create physician profiles on each physician licensed in Georgia including 20 identified disclosures relating to the physician's academic background, hospital privileges, geographic location of their practice, participation in the Medicaid program, criminal background, descriptions of disciplinary actions by regulatory boards, statements of resignation from or nonrenewal of medical staff membership, and final medical malpractice court judgments, etc. The underlying bill had absolutely nothing to do with women's reproductive rights and I was not focused on that issue.

What I meant in my testimony to the Committee was that in considering the amendment, and particularly when considering it during the busiest day of the legislative session, I did not consider the issue of violence against abortion doctors. I should have. I was considering the bill as a whole, the purpose of which was predominately to educate and make available to the public information concerning a physician's disciplinary history and malpractice judgments. As I think back on this bill, the only thing I recall being discussed, and the issue that garnered all of the attention of which I was aware, was the question of whether and how malpractice judgments and settlements would be disclosed.

By my testimony to the Committee, I did not intend to convey categorically that I was generally unaware of claims of violence against physicians that perform abortions. I would have been aware of some of the cases of violence at that time, although I do not recall specifically hearing any of these concerns raised relative to this amendment. However, I should have considered these concerns at the time the

amendment was presented and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

b. **On February 13, 2001, the *Atlanta Journal-Constitution*'s editorial about this bill included numerous examples of violence and said that "[a] pretty good bill was ruined in the Georgia House of Representatives last week with a terrible amendment that would make targets out of doctors who perform legal abortions**."

   i. **Did you regularly read the *Atlanta Journal-Constitution* during your tenure in the legislature?**

      Response: During my service in the Georgia General Assembly from 2001 to 2004, I did not personally subscribe to the *Atlanta Journal-Constitution*, but I did occasionally read it. I tended to read newspapers published in or near my legislative district which was 240 miles southeast of Atlanta.

   ii. **Did you read this editorial while H.B. 156 was pending in the legislature in 2001? Prior to voting on this amendment in March 2001, were you otherwise aware of the violence or threats of violence referenced in the editorial?**

      Response: Respectfully, I have no memory of reading this editorial in the February 13, 2001 edition of the *Atlanta Journal-Constitution*. My legislative district was 240 miles southeast of Atlanta. I would have been aware of some of the cases of violence at that time, although I do not recall specifically hearing any of these concerns raised relative to this amendment. However, I should have considered these concerns at the time the amendment was presented and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

   iii. **Were you present on the House floor during the "lengthy debate" in February 2001 described in this editorial?**

      Response: I was present that day. I do not know if I was on the floor during the debate over this particular amendment or any other anti-abortion amendments and have no independent recollection of this debate whatsoever.

   iv. **During the "lengthy debate," did any member of the House raise the issue of the serious violence that could occur as a result of this amendment being enacted in a floor speech or with you directly?**

      Response: Not to my knowledge. I do not know if I was even on the floor during the debate in February 2001 over this particular amendment or any other anti-abortion amendments, and I have no independent recollection of this debate whatsoever nor of any member of the House raising the issue of

the serious violence that could occur as a result of this amendment being enacted.

c. **Following the initial adoption of this amendment in the House on February 8, 2001, approximately six weeks elapsed before you cast a roll call vote on the amendment on March 21, 2001.**

    i. **During that six-week intervening period, did you learn about, or did anyone otherwise bring to your attention, the serious violence that could occur as a result of this amendment being enacted?**

    Response: No.

    ii. **Senator Franken and other members asked whether, at the time you voted for this amendment, you were aware of the public safety risk. While you said your position was "ill-conceived," you also said you were unaware of the public safety risk at the time.**

    Senator Franken asked: "[Y]ou were a State legislator at the time but were not aware of any of the public safety issues that were involved around this whole issue?" You responded: "I was not, and I think that is probably attributable to the fact that this came as a floor amendment, not a bill, not something I had an opportunity to study, not something I had the opportunity to even speak to other legislators about. It happened on the floor . . . ."

    Given the six-week intervening period between February 8, 2001 and March 21, 2001, I do not understand your assertion that this issue was "not something [you] had an opportunity to study, not something [you]had the opportunity to even speak to other legislators about . . . ." Can you please explain further?

    Response: I was a pro-life legislator representing a pro-life constituency and was therefore more inclined to support legislation that was described as pro-life. In retrospect, I wish I had given greater consideration to the possibility that abortion providers might have encountered violence as a result of this amendment because under no circumstances do I favor such heinous acts. When I spoke of my lack of knowledge on the issue of the serious violence that could occur as a result of this amendment, what I meant to convey was that I did not consider the issue of violence against abortion doctors at the time of my vote. I should have. I was considering the bill as a whole, as a matter dealing largely with educating the public on physicians' disciplinary history and any malpractice final judgments. As I think back on this bill, the only issue I recall being discussed, and the issue that I recall garnering attention, was the question of whether and how malpractice judgments and settlements would be disclosed. Because the amendment regarding publication

of the number of abortions performed by a doctor was agreed to without a recorded vote in February, I did not realize that I should have studied the issue before the overall legislation was considered again on the last day of the legislative session. I did not co-sponsor the amendment and did not follow it through the legislative process. In my statement before the Committee, I did not intend to convey categorically that I was generally unaware of claims of violence against physicians that perform abortions. As stated, I should have considered this at the time the floor amendment was considered and regret my vote for this amendment as it was ill-conceived.

iii. **Was there any debate on the House floor about the amendment in March 2001, prior to the roll call vote on the amendment? Were you present during such debate? Did such debate include any mention of the potential violence?**

Response: I was present that day. Although I understand from recent press reports that the issue of violence against abortion doctors was debated on the House floor that day, I do not recall that debate. I do not know if I was on the floor during any debate on this measure. It is possible that I was not. The day this amendment was finally considered was March 21, 2001, the last day of the session and the day generally considered to be the busiest legislative day of the year. We convened at 10:00 a.m. and adjourned at midnight. The House Journal for that day alone consists of 489 pages. Because of the volume of bills and amendments that day, it would not have been uncommon to have only a few minutes of debate before a particular vote. I have no recollection of any debate from that day including any debate on this particular amendment. I should have considered these concerns at the time the amendment was considered and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

iv. **Before your March 21 vote on this amendment, were you aware of the widely-reported example of Eric Rudolph, who was charged in October 1998 with the 1996 Atlanta Olympics bombing as well as with the bombings of two women's health clinics, one of which was the Sandy Springs clinic in Georgia referenced in the above editorial**?

Response: I am sure that in 2001, I would have been aware of the Eric Rudolph case and the 1996 Atlanta Olympics bombing. I do not know whether I would have been aware of the bombings of two women's health clinics which were referenced in the editorial. By my testimony to the Committee, I did not intend to convey categorically that I was generally unaware of claims of violence against physicians that perform abortions. As stated, I should have considered this at the time the floor amendment was considered and regret my vote for this amendment as it was ill-conceived and dangerous, and I should not have supported it.

v. **Before your March 21 vote on this amendment, were you aware of any other violence or threats directed toward legal abortion providers or patients?**

Response: I was only aware of the issue generally.

d. **You repeatedly sponsored bills to create a "Choose Life" license plate program in the State of Georgia. Under H.B. 254 (2003), the money collected would be distributed to "not for profit agencies . . . whose services are limited to counseling and meeting the needs of pregnancy women who are committed to placing their children for adoption." The bill also states: "Funds may not be distributed to any agency that is involved or associated with abortion activities . . . ."**

i. **Whom did you intend or expect these measures to fund? Please state whether you expected funding recipients to include organizations known as crisis pregnancy centers.**

Response: In accordance with the language of the proposed bill, I expected the funds would be distributed "to nongovernmental, not for profit agencies within the county whose services are limited to counseling and meeting the needs of pregnant women who are committed to placing their children for adoption." I supported this legislation because I was aware that a nonprofit organization in my legislative district would be eligible to apply for funding. To the best of my recollection at the time, I had no knowledge whether that agency was a crisis pregnancy center or about any general concerns regarding crisis pregnancy centers.

ii. **Do you recall any instance in which you spoke or issued a statement in support of these measures, either on the floor of the House, in a legislative committee, in a political campaign, or in a campaign for judicial office?**

Response: Other than generally stating my support for the Choose Life adoption support program during a legislative town hall meeting in Waycross while I was a legislator, to the best of my knowledge, I have never spoken of or issued any statement in support of these bills. I did not speak in support of these measures on the floor of the House nor in any legislative committee, and to the best of my recollection, other than as noted herein, I have never spoken of or issued any statement in support of these bills in any political campaign and have not done so in any campaign for judicial office.

iii. **As you may know, organizations known as crisis pregnancy centers have been criticized for deceptive tactics with respect to vulnerable women.**

For example, *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council Baltimore*, 721 F.3d 264 (4th Cir. 2013) (en banc)

concerned the constitutionality of a disclosure law for such entities. The decision references parts of the legislative record that describe situations in which women are given misleading information about options available to them and may not be seen by true medical professionals.

1. **At the time you sponsored the "Choose Life" license plate measures, had anybody brought to your attention, or were you otherwise aware, that this bill might generate funds for crisis pregnancy centers?**

   Response: No, I supported this legislation because I was aware that a nonprofit organization within my legislative district would be eligible to apply for funding.

2. **If so, had anybody brought to your attention, or were you otherwise aware of, any criticisms of crisis pregnancy centers similar to what I described above?**

   Response: No one ever brought this issue or these particular criticisms to my attention.

e. **The Supreme Court reiterated in *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007): "Before viability, a State 'may not prohibit any woman from making the ultimate decision to terminate her pregnancy.' It also may not impose upon this right an undue burden, which exists if a regulation's "purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability."' (quoting *Casey*, 505 U.S. at 879)).**

   Thus, the Ninth Circuit has held that Arizona may not "prohibit abortion beginning at twenty weeks gestation, before the fetus is viable." *Isaacson v. Horne*, 716 F.3d 1213, 1217 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 905 (2014). Concurring, conservative Judge Andrew Kleinfeld wrote: "The question for us is whether the current state of constitutional law prohibits the states from imposing that restriction. It does." *Id.* at 1233 (Kleinfeld, J., concurring).

   i. **Will you have any difficulty applying the Supreme Court's clear precedent on this issue, including the clear line the Supreme Court has placed at fetal viability?**

      Response: Absolutely not. I am committed to faithfully following the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals on this, and any other issue.

f. **In response to a question from Senator Blumenthal, you stated: "Senator, to my knowledge, I have never given any public comments on my position on reproductive rights. I have cosponsored some bills in the General Assembly, to**

my knowledge I also voted on a couple of amendments on the floor of the House that I did not author and had no authorship in, but to my knowledge I have never given any speeches concerning reproductive rights."

i. **Was there any instance in which, in a legislative committee, on the floor, at a constituent meeting, or otherwise, you made any public remarks about reproductive rights, the issue of abortion, or any other related issue?**

   Response: No, to the best of my recollection. I have never made any public remarks in any legislative committee or on the floor of the House about reproductive rights, the issue of abortion, or any other related issue. To my knowledge, the only time the matter was even remotely addressed was at a town hall constituents meeting held in Waycross, where as a state legislator I briefly mentioned that I had co-sponsored the Choose Life Adoption Support Program license plate bill, and stated that the money would be used to support adoption programs.

g. **In response to a question from Senator Blumenthal, you stated, in part: "I think, as a legislator casting thousands of votes for amendments and bills and making decisions in committee, it is not, I think, entirely unexpected that there may be some votes that I cast throughout my [legislative] career that in hindsight looking back on them as a legislator trying my best to represent the people that I represented in a very staunchly pro-life district, I may have made some mistakes."**

   You also commented during the hearing that your district was a "very conservative, and a very pro-life constituency," and that you believed it "was the obligation of a legislator to vote – listen to and vote – the will of their constituency. Those issues were very important to my constituents, and that's why I supported that floor amendment."

i. **Given that you knew your district was "very staunchly pro-life" while you were in the legislature, I assume you had some way of communicating your position on reproductive rights issues to your constituents. How did you ensure your constituents were informed about your views and legislative actions on the issue of abortion?**

   Response: Respectfully, and to the best of my knowledge, I never directly communicated my personal position on reproductive rights issues to my constituents. I did regularly write legislative updates for publication in our local newspaper (previously submitted to the Committee with my Questionnaire), and held regular town meetings to discuss the work of the General Assembly. However, to the best of my knowledge, I never wrote regarding my position on reproductive rights issues and did not speak at a town hall meeting to legislative actions on the issue of abortion other than the

time I mentioned the Choose Life Adoption Support Program. My constituents may have learned of my positions if they followed the votes I cast, but, this was not an issue I was outspoken on, actively engaged in promoting, nor was it one that I discussed with my constituents. I campaigned on the themes of improving education, improving transportation, lowering the property tax burden on senior citizens and bringing jobs to my district. These were the issues I expected to and did address as a state legislator.

(5) I would like to ask you about a bill (H.B. 1411, 2003-04) that would have prohibited state or local government from "transacting business or otherwise communicating in languages other than" English. The bill also would have stricken existing exceptions, including "[w]hen the public safety, health, or justice requires the use of other languages."

On February 10, 2004, there was a motion on the floor to engross the bill. "If a motion to engross a bill at the second reading is approved . . . [i]n effect, the bill as introduced is engrossed—or certified as the final copy—and it may not thereafter be amended." ***See*** **Edwin L. Jackson, Mary E. Stakes, & Paul Hardy, HANDBOOK FOR GEORGIA LEGISLATORS 182-83 (12th ed. 2001). You voted for the motion to engross, which failed.**

a. **Did you support this measure? Why did you to vote to engross this measure?**

Response: I do not recall what my position was on that bill ten years ago or if I had even formulated an opinion. I do not know specifically why I would have supported the motion to engross, but in reviewing the House journal it appears that the House Democratic leadership, including the House Majority Leader supported the motion and it was not entirely unusual for me to follow the lead of my caucus on procedural votes such as motions to engross.

b. **I am concerned about the serious implications of this bill had it been enacted – essentially barring first responders, police officers, physicians, 911 operators, or a whole host of other state or local government employees from communicating with non-English-speaking individuals. Did you consider these sorts of situations prior to voting to engross this bill, or any other ramifications it might have?**

Response: I do not recall what my position was on that bill ten years ago or even if I had formed an opinion on it. As such, I do not recall whether I considered these sorts of situations or other ramifications prior to voting to engross this bill.

c. **If confronted with a constitutional challenge to such a law as a judge, how would you decide whether it is constitutional? What issues would you consider, assuming the plaintiff had standing to bring the challenge?**

Response: If confirmed, and a case came before me presenting a constitutional question, I would first review cases from the United States Supreme Court and the

Eleventh Circuit and faithfully apply this precedent to the facts of the case. I would conduct additional research of persuasive appellate and trial court decisions from other jurisdictions within the United States if necessary.

d. **In your experience as a state court judge, has it ever been necessary or useful in a case for an interpreter or translator to be present to assist a witness or party in answering questions, obtaining the advice of counsel, or communicating with the court? If so, please provide examples.**

Response: I regularly used interpreters while a trial court judge. This typically occurred in criminal cases and was always conducted consistent with the rules of the Georgia Supreme Court relative to the use of courtroom interpreters. I was always cognizant and respectful of my obligations as a judge to ensure that all litigants, including those with limited English proficiency, were treated fairly and respectfully and were able to understand and participate in all court proceedings held before me.

e. **Do you believe H.B. 1411 is consistent with the role of a judge in ensuring that litigants receive due process of law?**

Response: It would be inappropriate for me, as a sitting judge of the Court of Appeals of Georgia and a nominee for a federal district court judgeship to express my personal opinion about whether any specific former or current proposed legislation is consistent with the role of a judge in ensuring that litigants receive due process of law. My judicial career reflects that I have been steadfastly committed to ensuring that all litigants, including those with limited English proficiency, are treated fairly and respectfully and are able to understand and participate in court proceedings. Fulfillment of this obligation is a fundamental obligation of a judge.

f. **How do you plan to carry out the statutory and constitutional responsibilities of a District Judge to ensure all litigants, including those with limited English proficiency, are treated fairly and respectfully and are able to understand and participate in court proceedings? *See* 28 U.S.C § 1827.**

Response: If confirmed, I will faithfully follow the precedent of the United States Supreme Court, the Eleventh Circuit Court of Appeals, and the Federal District Court Rules and Procedures regarding the use of interpreters. I would also rely upon and follow the provisions of 28 U.S.C. § 1827 on matters involving the obligations of a district judge to ensure all litigants, including those with limited English proficiency, are treated fairly and respectfully and are able to understand and participate in court proceedings. As a state trial court judge, I routinely used interpreters in court proceedings before me and have demonstrated a commitment to ensuring that all litigants, including those with limited English proficiency, are treated fairly and respectfully and are able to understand and participate in their court proceedings.

(6) I would like to ask you about a number of votes you took about the Georgia state flag.

a. **Do you agree that there was significant resistance to desegregation in Georgia in the 1950s, including after the *Brown* decision?**

Response: I understand from my study of Georgia history that there was significant resistance to desegregation in Georgia, as in many other southern states after the *Brown* decision.

b. **During your tenure in the legislature, and particularly prior to any of your votes on the Georgia state flag, were you aware of that history?**

Response: Yes.

c. **During your tenure in the legislature, and particularly prior to any of your votes on the Georgia state flag, were you aware of any connection between that history and the adoption of the 1956 flag?**

Response: Yes.

d. **At your hearing, you said, at the time of your votes on the flag, you were "offended" by the confederate battle emblem. You also said the following: "I found that one of the most challenging things of being a legislator was deciding when to vote the will of my constituents and when to vote the will of myself and my own conscience. It was something I have known other legislators to struggle with; I struggled with it regularly, on that issue particularly." What did your conscience tell you in 2001 and 2003 about the flag?**

Response: I believed then and still believe that the flag is offensive to many people based on its historical association with the Civil War and the institution of slavery, the connection between the adoption of the flag and the Supreme Court's decision in *Brown*, and the flag's more recent usage by organizations that espoused hate and racism and who overtly oppressed African-Americans. Although I recognized that many of my constituents supported the flag because they viewed it as a symbol of heritage, I thought that the State of Georgia could do better than remain steadfastly committed to such a notable and visible state symbol that represented such a terrible and tragic past that was so hurtful and divisive for so many of Georgia's citizens.

e. **You indicated that this conflict between your conscience and your constituents was something you struggled with "regularly" as a legislator. On what other issues did you have this struggle? Was reproductive rights one of them?**

Response: I do not recall any specific votes of the magnitude of the flag or where my constituent's views and my own were so strongly in opposition. During the course of my legislative career, the views of a majority of my constituents on many particular legislative matters were simply unknown. In those cases, I considered what I thought their views might be, based perhaps on the views on similar issues. I also considered that my constituents had placed their trust in me to represent them and that when in

doubt of their views, I could still faithfully represent them by following my conscience. Because I considered myself to be a pro-life legislator, reproductive rights were not one of the issues that presented a conflict between my conscience and my constituents.

f. **During any campaign to serve as a state court judge, did anybody raise with you your votes on the flag? Please describe such interactions and what you said in that context, if you can recall.**

Response: No. The flag was not raised during any of my judicial campaigns. The flag also was not raised when I was opposed in the Democratic primary in 2002 for re-election to the legislature, and I received 90% of all votes cast within my legislative district.

(7) In your application to be an appellate judge, you wrote: "At the appellate level, a clerk should be of similar philosophical and judicial leanings as the judge under whom they are employed. The clerk should understand clearly the limited role of the appellate courts in our society and clearly understand the proper delineation in roles between the legislative and judicial branches of government. I would also expect my clerk to share my conservative judicial philosophy."

a. **Please describe your "conservative judicial philosophy" and state what you intended to convey by that phrase in your judicial application.**

Response: Thank you for the opportunity to clarify this statement. I did not mean that my judicial philosophy is politically conservative. I do not believe that political beliefs should play any role in judging. Rather, I intended to convey to the Judicial Nominating Commission my respect for the limited, or conservative, role of a judge and the obligation of judges to have fidelity to the law and that judges have no role in policy making. And, I intended to convey my general belief that judges should be conservative by being constrained to answer only those questions properly presented to them. My judicial philosophy is that I am faithful to the doctrine of *stare decisis* and the rule of law, being mindful and respectful of the proper and limited role of the judiciary within our democracy. Throughout my entire judicial career, I have committed to working hard, and being prepared and diligent in managing my cases being ever mindful of the importance of each case to the litigants. I strive to decide cases fairly, impartially and without bias and to apply binding precedent to the facts in a fair and impartial manner. Judges should be fair, open-minded, and not predisposed to any particular personal or public policy position and, judges should treat all parties with civility and respect.

b. **What did you mean by the "limited role of the appellate courts in our society" and the "proper delineation in roles between the legislative and judicial branches"?**

Response: By these comments, I intended to highlight the limited role of our appellate courts bound by rules of appellate practice and appellate standards of review. I intended to convey my appreciation for the limited role of the appellate judiciary in that appellate judges do not re-try cases, generally do not re-weigh the evidence, and do not judge the credibility of witnesses. I intended to convey that the role of an appellate judge is markedly different from that of a trial court judge. I also intended to convey that the proper delineation in roles between the legislative and judicial branches includes that judges should be faithful to the rule of law and the doctrine of *stare decisis*, and that judges have no role in policy making.

(8) You also wrote on your appellate judge application: "The judiciary continues to endure criticism, fairly earned in some cases, of abrogating their constitutionally created authority by issuing decisions that venture into policy making. Partisan political campaigns are increasingly politicizing our judiciary in part, because of judicial decisions that have ignored and violated the basic tenets of the judiciary, that policy making is the sole province of a duly elected citizen legislature." You continued that the appellate court should not be "partisan refuges for policy makers."

a. **You state that criticism of the judiciary for "abrogating their constitutionally created authority by issuing decisions that venture into policy making" is "fairly earned in some cases."**

i. **Is this how you define "judicial activism"?**

Response: I would define "judicial activism" as the actions of judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent.

ii. **Please name any decisions you believed "abrogate[ed]" the judiciary's "constitutionally created authority." In particular, please state whether you were referring to the following decisions and whether you think any of them is an "activist" decision.**

Response: I do not recall any specific cases to which I may have been referring to when I made that statement in 2011.

1. ***Griswold v. Connecticut*, 381 U.S. 479 (1965).**

Response: *Griswold v. Connecticut* is binding precedent. If confirmed as a United States District Judge, I would faithfully apply this and all other Supreme Court and Eleventh Circuit precedent.

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

Response: *Eisenstadt v. Baird* is binding precedent. If confirmed as a United States District Judge, I would faithfully apply this and all other Supreme Court and Eleventh Circuit precedent.

3. ***Roe v. Wade*, 410 U.S. 113 (1973).**

   Response: *Roe v. Wade* is binding precedent. If confirmed as a United States District Judge, I would faithfully apply this and all other Supreme Court and Eleventh Circuit precedent.

4. ***Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (opinion of Justices Kennedy, O'Connor, and Souter).**

   Response: *Planned Parenthood v. Casey* is binding precedent. If confirmed as a United States District Judge, I would faithfully apply this and all other Supreme Court and Eleventh Circuit precedent.

5. ***Lawrence v. Texas*, 539 U.S. 558 (2003).**

   Response: *Lawrence v. Texas* is binding precedent. If confirmed as a United States District Judge, I would faithfully apply this and all other Supreme Court and Eleventh Circuit precedent.

6. **Any decision on the issue of whether same-sex couples have the freedom to marry under the state or federal constitution, such as *Goodridge v. Dep't of Public Health*, 798 N.E.2d 941 (Mass. 2003), *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008), *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009), or *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010).**

   Response: I would define "judicial activism" as the actions of judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent. I have no reason to believe that any judge in any of these cases is "activist." Judges have an obligation to apply precedent and uphold the Constitution, and if confirmed, I am committed to faithfully applying precedent whether it be *United States v. Windsor*, 570 U.S. 12 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decisions of the United States Supreme Court or the Eleventh Circuit Court of Appeals. I believe that my record as a state court judge for ten years demonstrates my commitment to precedent and to treating all litigants who appear before me fairly, equally, and with respect and dignity.

7. **Any decision on Section 3 of the federal Defense of Marriage Act, such as *Gill v. Office of Personnel Management*, 699 F. Supp. 2d**

374 (D. Mass. 2010), or *Dragovich v. U.S. Department of the Treasury*, 764 F. Supp. 2d 1178 (N.D. Cal. 2011), which had been issued prior to the Supreme Court's decision in *Windsor*.

Response: If confirmed as a United States District Court Judge, I would faithfully apply the precedent of the United States Supreme Court in *United States v. Windsor*, 570 U.S. 12 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), *Romer v. Evans*, 517 U.S. 620 (1996), or any other decision of the United States Supreme Court or the Eleventh Circuit Court of Appeals on this issue.

iii. **To what "criticism" were you referring, and why did you believe it was "fairly earned"?**

Response: I do not recall any specific cases to which I may have been referring when I made that statement in 2011. I was probably generally referring to judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent. As I think back, my comments were intended simply to convey my understanding and appreciation for the limited role of judges to be faithful to the rule of law and the doctrine of *stare decisis* and that judges should not be policy makers.

iv. **Which judicial decisions did you believe were the cause of "partisan political campaigns" that "politiciz[e] our judiciary"? To which campaigns were you referring? How do you believe particular judicial decisions caused such campaigns to "politicize" the Judiciary?**

Response: I was not referring to any particular judicial decision that I believed was the cause of "partisan political campaigns" that "politicize our judiciary." To the best of my recollection, I was referring generally to nonpartisan judicial campaigns where candidates may overtly refer to themselves as a "Democrat" or "Republican" even though the office is nonpartisan. I was also referring generally to judicial campaigns where candidates pick a particular case that a judge may have ruled on and exploit the decision for political purposes without regard to the obligation judges have to the rule of law and the doctrine of *stare decisis*. To me, this would be an overt attempt to politicize the judiciary.

v. **What did you mean by the phrase, "partisan refuges for policy makers"?**

Response: I meant simply that judges should understand the limited role of the judiciary to be faithful to the rule of law and the doctrine of *stare decisis* and that judges should not be policy makers.

Questions for the Record for Judge Michael P. Boggs
Senator Al Franken

1. **At your hearing before the Senate Judiciary Committee, we discussed an amendment that you voted for during your time in the Georgia House of Representatives that would have required all doctors to list the number of abortions they had performed in the last ten years in publicly available profiles. This amendment ultimately failed, but would have put doctors who perform abortions at greater risk of harm. You said that you were not aware, at the time you voted for this amendment, that doctors who provided abortions had been targeted and killed, and that clinics where abortions were provided had been bombed. You said you were not aware of the public safety issues associated with requiring doctors to release the number of abortions they had provided, and that you did not have the opportunity to study this amendment or speak with your colleagues about it because it came up on the floor.**

   The amendment was originally adopted without a recorded vote in the Georgia House of Representatives on February 8, 2001. The full bill, which included the amendment, was then sent to the Senate for consideration. The Senate passed a version of the bill that did not include the amendment. The bill was then sent back to the House, where your chamber voted on whether to put the amendment back into the bill. This second vote on the amendment occurred on March 21, 2001, and although the amendment failed, you voted to include it in the bill.

   (a) Are you aware that this amendment came up for a vote twice in the Georgia House of Representatives, first on February 8, 2001 and second, on March 21, 2001?

Response: Yes. Having reviewed the House Journal, I am now aware of both the unrecorded and recorded votes.

(b) Did you have time to review the amendment or discuss it with your colleagues when it came up for a vote the second time, on March 21, 2001, almost a month and a half after the first time the amendment was proposed and voted on by your chamber, on February 8, 2001?

Response: The amendment came up first in February of 2001 on the floor of the House and was passed without a recorded vote. I do not recall this amendment nor any debate or discussion of it at that time. The matter was reintroduced again on the last day of the 2001 legislative session as an amendment to H.B. 156. The last day of the session is generally considered to be the busiest legislative day of the year. We convened at 10:00 a.m. and adjourned at midnight. The House journal for that day alone consists of 489 pages. Although I understand from recent press reports that the issue of violence against abortion doctors was debated on the House floor that day, I do not recall that debate. Because of the volume of bills and amendments that day, it would not have been uncommon to have only a few minutes of debate before a particular vote. I do not remember having even heard of the amendment prior to the author presenting it on the floor of the House just prior to the final vote. To the best of my recollections, this amendment was never discussed in any Democratic caucus meeting I ever attended, I recall no correspondence from House Democratic leadership regarding the anticipated amendment at any time, and I do not recall discussing it on the floor of the House with any Democratic or Republican member. I am also certain that I did not speak to Democratic Party leadership about the safety concerns for doctors posed by this

amendment, nor did I even hear of such at the time. I did not co-sponsor this amendment, and to my knowledge, I never spoke to the author about this amendment.

On February 13, 2001, The Atlanta Journal-Constitution – the main newspaper in Georgia – published an editorial criticizing the Georgia House of Representatives for adopting this amendment. The editorial noted that in "the past six years, at least five abortion-providing doctors have been murdered, and dozens of others have been harassed with bomb scares and threats to harm patients and medical personnel." The editorial called the amendment "dangerous" and said that it "would make targets out of doctors who perform legal abortions."

(c) Were you aware of this editorial or any other news coverage about this amendment during the almost month and a half when the amendment was being considered, from February 8, 2001 (or earlier) until March 21, 2001?

Response: Respectfully, I have no memory of reading this editorial in the February 13, 2001 edition of the *Atlanta Journal-Constitution*. Atlanta is 240 miles north of my former legislative district. As a result, I only occasionally read this publication during the time this editorial was published.

Questions for the Record to Michael Boggs
Submitted by Senator Chris Coons
May 20, 2014

1. **In your 2011 application to be a Court of Appeals Judge, you stated that, "the judiciary continues to endure criticism, fairly earned in some cases, of abrogating their constitutionally created authority by issuing decisions that venture into policy making."**

    a. **To what cases were you referring when you submitted your application in 2011?**

       Response: I do not recall any specific cases to which I may have been referring when I made that statement in 2011. I was probably generally referring to judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent. As I think back, my comments were intended simply to convey my understanding and appreciation for the limited role of judges to be faithful to the rule of law and the doctrine of *stare decisis*, and that judges should not be policy makers.

    b. **For each case or decision, has your opinion changed with respect to whether the judiciary has abrogated its constitutional authority?**

       Response: I do not recall any specific cases to which I may have been referring to when I made that statement in 2011.

2. **Canon 7A of the Georgia Code of Judicial Conduct forbids judges to "make a contribution to a political organization." Georgia Conservatives in Action ("GCIA") endorses candidates for elective office and, therefore, may qualify as a political organization under the Code of Judicial Conduct. In September 2012, your campaign committee contributed $1500 to GCIA. During your May 13, 2014 nomination hearing, you testified that you had been unaware of GCIA's political activities at the time that you made that donation. According to an Atlanta Journal-Constitution blog posting (http://politics.blog.ajc.com/2014/05/19/john-lewis-i-would-vote-against-the-confirmation-of-michael-boggs/ accessed on May 19, 2014), however, you attended an October 2010 GCIA event attended by Nathan Deal (then running for Governor), Gary Black (then running for Agricultural Commissioner), and Lt. Gov. Casey Cagle. Nathan Deal had been endorsed for Governor by GCIA on August 7, 2010. At photos of the event, campaign signs appear prominently.**

    a. **Do you maintain that you were unaware in 2012 that Georgia Conservatives in Action endorsed candidates for elective office?**

Response: Yes. I am very respectful and mindful of the obligations of judges pursuant to the Georgia Code of Judicial Conduct. And, throughout my ten-year judicial career, I have endeavored to be faithful to and exceed my legal obligations pursuant thereto. As a judge, I have never made a contribution to a political organization as that term is defined by the Georgia Code of Judicial Conduct.

b. Did the presence of campaign signs and multiple candidates for statewide office at the October 2010 Georgia Conservatives in Action event in Waycross, GA give rise to a reasonable inference that Georgia Conservatives in Action endorsed any candidates for elective office?

Response: To my knowledge, I have attended two GCIA events. Elected state and local officials and candidates – sometimes competing candidates – were present at both events. I did not consider their presence, particularly since competing candidates were present, or their campaign signs at one of the events, to be reflective of any “endorsement” by GCIA.

c. Do you consider Georgia Conservatives in Action to be a political organization under Canon 7A of the Georgia Code of Judicial Conduct?

Response: No. The Georgia Code of Judicial Conduct defines a “political organization” to be “a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.” GCIA was organized and incorporated as a social welfare organization under section 501(c)(4) of the Internal Revenue Code. By definition under the regulations of the Internal Revenue Service a social welfare organization is an entity that is “primarily engaged in promoting in some way the common good and general welfare of the people of the community.” *See* 26 C.F.R. section 1.501(c)(4)-1(a)(2). Inasmuch as election activity and social welfare are different things, an organization can not have the principal purpose of furthering the election or appointment of candidates to political office (the definition of a “political organization” under the Code) and also have the primary purpose of promoting social welfare (the definition of a 501(c)(4)).

Inasmuch as GCIA is a 501 (c)(4), it cannot be a political organization under the Code. This is true notwithstanding the fact that GCIA has apparently endorsed candidates for political office. Under the tax code, a 501 (c)(4) may endorse candidates. So long as its election-related activities do not become its principal or primary purpose, the entity remains a (c)(4), and it cannot be a “political organization” under the Code.

d. **Do you believe it would be appropriate for a judge to financially support the political activities of an organization like Georgia Conservatives in Action?**

   Response: I do not believe it would be appropriate for a judge to financially support any "political organization," as defined by the Georgia Code of Judicial Conduct, and as a judge, I have never done so.

e. **Prior to making any contribution to Georgia Conservatives in Action, what steps did you take to ascertain whether contributions to that organization would be permitted under the Georgia Code of Judicial Conduct?**

   Response: In exercising due diligence prior to my former campaign committee's donations, I reviewed the pertinent section of the Code of Judicial Conduct defining "political organization" and reviewed Georgia statutory authority regarding the disposition of campaign contributions, paying particular attention to O.C.G.A. § 21-5-33 (b)(1)(a), which expressly permitted contributions to a nonprofit organization. I also spoke personally with the representative of the organization who solicited the contributions and verified that the organization was duly incorporated as a nonprofit organization. I was also familiar with the organization's tax status at the time, as evidenced by my notation of "501 C 4 Donation" on the April 6, 2012 check and my notation of "nonprofit contribution per: O.C.G.A. § 21-5-33(b)(1)(A)" on the September 27, 2012 check.

3. **Canon 7A of the Georgia Code of Judicial Conduct also provides that a judge shall not "publicly endorse a candidate for public office." According to an Atlanta Journal-Constitution blog posting (http://politics.blog.ajc.com/2014/05/19/john-lewis-i-would-vote-against-the-confirmation-of-michael-boggs/ accessed on May 19, 2014), you attended a 2012 fundraiser for a candidate for Georgia State Senate.**

   a. **Please describe your participation in fundraisers, speeches, and other events associated with candidates for public office, since 2004.**

      Response: In January of 2012, I attended a fundraiser for State Senator-elect Tyler Harper. At the time I attended, I fully intended to run for re-election to the Court of Appeals. Therefore, I was authorized to attend this event or any fundraiser for any other partisan or nonpartisan political candidate and did so with a full understanding that the attendance was authorized by the Code of Judicial Conduct and the Advisory Opinions stated herein.

      Specifically, Canon 7(A)(2) of the Georgia Code of Judicial Conduct provides that "[j]udges holding an office filled by public election between

competing candidates, or candidates for such office, may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election." Relying in part on this provision, the Judicial Qualifications Commission has ruled in a number of Advisory Opinions that elected judges and judicial candidates may attend fundraisers for partisan candidates. See, e.g., Opinion No. 90 (October 24, 1986) (judicial candidate may attend fundraisers for partisan candidates); Opinion No. 124 (July 29, 1988) (if a judge has made the decision to run for election or re-election to office, he is a candidate and thus may attend a fundraising event for a partisan, non-judicial candidate if he is acting on his own behalf and the purpose of his attendance is to encourage individuals to vote for him in a future election); Opinion No. 203 (Dec. 15, 1995) (in attending a fundraising event for another candidate, a judge is not making a prohibited public endorsement) adding that "[t]he Commission makes this determination in recognition of the fact that most judges in this state must themselves periodically seek election to public office, and any other conclusion might be viewed as an unreasonable and unnecessary burden on the political process."

Since my election as a Judge in 2004, I have attended some fundraisers of local and state partisan and nonpartisan candidates for public office. I have done so on a very limited basis and always in strict compliance with the Georgia Code of Judicial Conduct and the Advisory Opinions issued by them relative to such activities.

b. **For each, please state whether you believe your participation to have constituted a public endorsement of a candidate for public office in violation of Canon 7A.**

Response: I am confident that my participation in attending fundraisers for any candidate while I have been a judge does not constitute a public endorsement of a candidate for public office in violation of Canon 7A. This conclusion is expressly supported by the provisions of Canon 7A(2) of the Georgia Code of Judicial Conduct and Advisory Opinion No. 203 (Dec. 15, 1995) which states that "in attending a fundraising event for another candidate, a judge is not making a prohibited public endorsement" adding that "[t]he Commission makes this determination in recognition of the fact that most judges in this state must themselves periodically seek election to public office, and any other conclusion might be viewed as an unreasonable and unnecessary burden on the political process."

c. **For each, please describe the steps you took to ascertain whether your participation would be permitted under the Georgia Code of Judicial Conduct.**

Response: In each and every instance where I may have attended a fundraiser for any candidate, I would have based my decisions on the provisions of Canon 7A(2) of the Georgia Code of Judicial Conduct and the Advisory Opinions of the Georgia Judicial Qualifications Commission related specifically to this issue.

Senator Blumenthal - Question for Judge Boggs

Choice Amendment

You voted for an amendment that would have identified doctors who performed abortions in profiles developed and maintained by the state of Georgia and made public online. Had the amendment passed, it would have put abortion care doctors' and other medical providers' safety at tremendous risk. At your confirmation hearing, you testified that you were unaware of any public safety concerns with respect to that amendment. However, an editorial in the February 13, 2001 edition of the Atlanta Journal-Constitution that appeared just prior to your vote specifically noted that the Amendment "will simply make the doctors, their offices and patients easier targets." These are words from the newspaper with the largest circulation in Georgia; a newspaper you advertised in.

A. **Did you read the February 13 editorial?**

   Response: Respectfully, I have no memory of reading this editorial in the February 13, 2001 edition of the *Atlanta Journal-Constitution*. Atlanta is 240 miles north of my former legislative district. As a result, I only occasionally read this publication during the time this editorial was published. To my knowledge, the only advertisement I ever placed in that publication was an advertisement for the sale of an automobile around 2010.

B. **Did you read the Atlanta Journal-Constitution on a regular basis?**

   Response: During my service in the Georgia General Assembly from 2001 to 2004, I did not personally subscribe to the *Atlanta Journal-Constitution*, but I did occasionally read it. I tended to read newspapers published in or near my legislative district which was 240 miles southeast of Atlanta.

C. **Would you have noted editorials that related to your legislative duties?**

   Response: I have no specific recollection of any reading any editorials related to my legislative duties in any newspaper ten to thirteen years ago, although it is fair to assume that I would have been most likely to pay attention to articles and editorials that were printed in newspapers in or near the district I represented.

D. **What news did you consume while carrying out your duties as a legislator?**

   Response: During my four-year legislative career, I recall regularly reading news from my legislative district consisting of two newspapers within my district and two to three newspapers from near my district. I also occasionally read the *Florida Times-Union*, a newspaper published in Jacksonville, Florida, approximately 75 miles from my legislative district and a paper that, unlike the *Atlanta Journal-Constitution*, specifically covered South Georgia news. While it would have occurred on a more limited basis during the legislative session, I occasionally read *The Daily Report* and the *Atlanta Journal-Constitution*.

Which publications did you read on a regular basis from 1993 to 2001? If you read different publications during different time periods, please indicate your reading habits by time period.

Response: I did not read different publications during different time periods from 1993 to 2001. During this time, I resided in Waycross, Georgia, which is 240 miles southeast of Atlanta. I regularly read the *Waycross Journal-Herald* and other local newspapers and legal publications, including the State Bar Journal. I also occasionally read the *Florida Times-Union*, a newspaper published in Jacksonville, Florida, approximately 75 miles from my home and legislative district and a paper that, unlike the *Atlanta Journal-Constitution*, specifically covered South Georgia news. I did not subscribe to nor regularly read the *Atlanta Journal-Constitut*ion, and to the best of my recollection, I did not regularly read or have any subscriptions to any newsmagazines during this time.

You were a member of the Democratic Party; the final vote for the amendment was 69 in favor of adopting the amendment and 86 against. 75 members of your party voted against adoption. While 17 members of your party did not vote, only four members of your party voted in favor of adopting the amendment.

A. Did Democratic Party leadership in the Georgia House ever suggest to you, directly or indirectly, that the amendment raised safety concerns for doctors?

Response: No. The amendment came up first in February of 2001 on the floor of the House and was passed without a recorded vote. I do not recall this amendment nor any debate or discussion of it at that time. The matter was reintroduced again on the last day of the 2001 legislative session as an amendment to H.B. 156. The last day of the session is generally considered to be the busiest legislative day of the year. We convened at 10:00 a.m. and adjourned at midnight. The House journal for that day alone consists of 489 pages. Although I understand from recent press reports that the issue of violence against abortion doctors was debated on the House floor that day, I do not recall that debate. Because of the volume of bills and amendments that day, it would not have been uncommon to have only a few minutes of debate before a particular vote. I do not remember having even heard of the amendment prior to the author presenting it on the floor of the House just prior to the final vote. To the best of my recollection, this amendment was never discussed in any Democratic caucus meeting I ever attended, I recall no correspondence from House Democratic leadership regarding the anticipated amendment at any time, and I do not recall discussing it on the floor of the House with any Democratic or Republican member. I am also certain that I did not speak to Democratic Party leadership about the safety concerns for doctors posed by this amendment. I did not co-sponsor this amendment and I never spoke to the author about this amendment.

This amendment was made to H.B. 156, a bill sponsored by the House Democratic Majority Leader. This bill concerned the adoption of a "Patient Right to Know Act of 2001." The bill proposed to repeal certain confidentiality provisions regarding reports of disciplinary actions against persons authorized to practice medicine. The bill required the Composite State Board of Medical Examiners to create physician profiles on each physician licensed in Georgia, including 20 identified disclosures relating to the physicians academic background, hospital privileges, geographic location of their practice, participation in the Medicaid program, criminal background, descriptions of disciplinary actions by regulatory boards, statements of resignation from or nonrenewal of medical staff membership, and final medical malpractice court judgments, etc. The underlying bill had absolutely nothing to do with women's reproductive rights and I was not focused on that issue.

What I meant in my testimony to the Committee was that in considering the amendment, and particularly when considering it during the busiest day of the legislative session, I did not consider the issue of violence against abortion doctors. I was considering the bill as a whole, the purpose of which was predominately to educate and make available to the public information concerning a physician's disciplinary history and malpractice judgments. As I think back on this bill, the only thing I recall being discussed, and the issue that garnered all of the attention of which I was aware, was the question of whether and how malpractice judgments and settlements would be disclosed.

By my testimony to the Committee, I did not intend to convey categorically that I was generally unaware of claims of violence against physicians that perform abortions. I would have been aware of some of the cases of violence at that time, although I do not recall specifically hearing any of these concerns raised relative to this amendment. However, I should have considered these concerns at the time the amendment was presented and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

B. **Were you aware that the vast majority of Democrats planned to vote no on the amendment? Did you ever discuss with any of your colleagues why they planned to vote no?**

Response: No. I have no specific recollection of ever speaking with any members of my party's leadership about how the Democrats planned to vote. When the matter was presented for a final recorded vote on the last day of the legislative session, I had no recollection of even knowing about the amendment. To the best of my recollection, this amendment was not discussed in any Democratic caucus meetings I attended during the 2001 legislative session, I recall no correspondence from House Democratic leadership regarding the anticipated amendment, I do not recall discussing it on the floor of the House with any member, Democrat or Republican, and I had no idea how other Democrats would vote on the issue.

C. **When the roll call vote occurred and the legislature rejected the amendment—after the vast majority of Democrats opposed it—did you ever wonder why so many of your colleagues disagreed with the position you took on the amendment?**

Response: No. Respectfully, I recognize it may seem odd that I did not give much consideration to why so many of my colleagues disagreed with the position I took. At the time I voted for the amendment I did so both because I considered myself to be a pro-life legislator and I believed that it was important to the very pro-life constituency I was elected to represent. I was more focused on representing my constituents and presumed that all of my colleagues were doing the same.

D. **If you wondered, did you ever ask any of your colleagues why they voted no?**

Response: I did not wonder.

E. **Did any of your colleagues mention after the vote that they voted no because they were concerned for the safety of doctors?**

Response: No, not to me.

F. Did you see any press coverage indicating why your colleagues opposed the bill?

Response: No.

G. If after the vote you learned of the safety concerns that led to the amendment being rejected by the House, did you look into these concerns? Did you change your position on the issue?

Response: I have changed my position on this issue. What I meant in my testimony to the Committee was that at the time this amendment was considered in 2001, I did not consider the issue of violence against abortion doctors. I was considering the bill as a whole. I should have considered the public safety concerns at the time this amendment was presented and regret my vote for this amendment. The amendment was ill-conceived and dangerous, and I should not have supported it.

H. Have you, in the thirteen years between that vote and your testimony during your confirmation hearing, ever said publicly that you regret that vote?

Response: Until just prior to my confirmation hearing, I did not recall that vote and no one has ever mentioned that vote to me. As a result, I had no occasion until the confirmation hearing to reconsider the issue or express any opinion on it or express regret that I voted for it.

Question for Judge Boggs

Judicial Record

In your testimony, you repeatedly asked to be judged by your judicial record and not by your legislative record. However, based on the materials you provided to the Committee and the answers you provided during your hearing, we still have little to no sense on how you would handle issues such as a woman's right to choose and equality for all citizens.

A. You mentioned that your views "may or may not" have changed regarding marriage equality but noted that you presided over a same-sex adoption hearing.

a. What are we supposed to infer from your involvement in this case?

Response: I would not expect the Committee to infer anything from my involvement in that case other than the fact that I decided the case as any judge should, based on a fair and unbiased application of the law to the facts of the case. While it is true that I have no record of handling a case that involved the constitutionality of a woman's right to choose because the courts on which I have served generally have no jurisdiction on this matter, my record demonstrates a ten-year unequivocal commitment and faithfulness to the rule of law and precedent in every case that has come before me, regardless of the type of case. My judicial record demonstrates that I would handle issues such as a

woman's right to choose by faithfully following the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals, as I have faithfully followed the precedent of higher courts throughout my career in disposing of nearly 14,000 cases. And, my judicial record demonstrates that in every case I have handled in my ten-year career that I have always treated every person that appeared before me equally and with respect and dignity.

b. Without revealing confidential information, could you explain the extent of your role and involvement in that adoption?

Response: While serving as the least senior Superior Court Judge in the Waycross Judicial Circuit, I was contacted by an attorney who indicated that he had a client who identified herself as a lesbian, and who desired to adopt a child out of foster care. This lawyer indicated that the then Chief Judge of the Judicial Circuit refused to set the case for a hearing apparently due to the sexual orientation of the lawyer's client. I considered this a fundamental "access to the courts" issue and discussed this issue with the other judge from our Circuit. The lawyer asked if I would agree to hear the case and I informed him that I would. I scheduled the matter on my next available hearing date calendar and heard the matter in a cleared courtroom as required by law in all adoptions. After hearing the testimony of the petitioner and witnesses, I granted the petition as I would have for any person based upon the same facts.

c. Did the case require you to preside over any contested hearings or rule on any unsettled questions of law?

Response: No.

B. You also testified that you sat on a panel which decided a parental notification case. Unfortunately, that case was not submitted to the Committee, but you agreed to get us the citation for that case.

a. What was your involvement in the case?

Response: The Court of Appeals in Georgia sits in panels of three judges and cases are assigned randomly to each panel. The opinion in question was authored by Presiding Judge Anne E. Barnes. I joined her opinion as I agreed with her analysis of the case and because I independently concluded that her opinion was correct based on the applicable appellate standard of review. I did not author the opinion, and consistent with the general belief of the other judges on our court, I do not consider any opinion which I did not author, or on which I did not write a dissent or concurring opinion, to be my authored opinion.

b. Can you briefly describe the question, facts, and outcome of the case?

Response: The question presented in that case was whether the juvenile court erred in denying the petition of a seventeen-year-old to waive the statutory requirement that her parents or legal guardian be notified before she underwent a procedure to terminate her pregnancy. Our court has a very limited and constrained role in the

review of these cases on appeal. The standard of appellate review by which we are bound demands that findings of fact made by a trial judge are reviewed by our court under the "any evidence" rule, under which a finding by the trial court supported by *any* evidence must be upheld. Additionally, the appeals court will not set aside the trial court's factual findings unless they are clearly erroneous and must give due deference to the opportunity of the trial court to judge the credibility of the witnesses.

The juvenile court concluded that the unemancipated minor was not mature enough nor well enough informed to make the decision to have an abortion in consultation with only her physician without notifying her parents. The evidence in the record showed that the minor and her son lived with her mother, she had never made a major decision without her parents' input, she did not demonstrate that she was informed about the abortion procedure beyond the most cursory information, and that the reason she did not want to tell her parents did not stem from any fear that they would abuse or harm her if they found out about the pregnancy. Under our appellate standard of review, we affirmed the judgment of the trial court because we could not say that the juvenile court judge erred in her decision to deny the petition as there was evidence in the record to support her conclusion.

c. How does this case demonstrate that you will uphold the law as it relates to women's reproductive rights?

Response: I discussed this case in response to a question of whether I had handled any case that dealt with reproductive rights and I did not mean to suggest that it held a particular significance with respect to my commitment to uphold the law as it relates to women's reproductive rights. That said, I believe it demonstrates that I will follow the law in all cases that come before me. The best evidence to demonstrate that I will uphold all laws, including those that relate to women's reproductive rights, is my ten-year record of disposing of nearly 14,000 matters. In each case, I have demonstrated faithfulness to the rule of law and have an unblemished record of applying the doctrine of *stare decisis* in all cases. If confirmed, I am committed to faithfully following the binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals on all matters, including those related to women's reproductive rights.

d. Why have you not provided this case to the Committee?

Response: I was asked to provide copies of all cases, both published and unpublished, which I authored. I did not author this opinion.

e. During your time as a judge, have you been involved in any way in any other cases that implicate in any way women's reproductive rights, the right to privacy, the rights of same-sex couples and LGBT individuals, or the rights of racial, ethnic or religious minorities?

Response: No. However, in disposing of nearing 14,000 matters, I have treated all parties without bias and with the utmost respect regardless of their gender, sexual orientation, race, ethnicity or religion.

Question for Judge Boggs

Donation to Georgia Conservatives In Action

In your testimony before the Committee, you repeatedly stated that you should be judged on your record as a judge, not as a legislator, and that you understand the difference between a judge and a legislator. Given the lack of information before the committee on your actions as a judge, I want to ask a question about your actions as a judicial candidate. On September 27, 2012, the Committee to Elect Mike Boggs Judge contributed $1,500 to Georgia Conservatives in Action.

A. At the hearing, you indicated that you were not aware that GCIA endorses candidates. In a recent google search for that organization, four of the first seven results discussed candidate endorsements. If you did not believe that GCIA endorsed candidates when you donated to them, what did you think they did?

Response: I am very respectful and mindful of the obligations of judges pursuant to the Georgia Code of Judicial Conduct and throughout my ten-year judicial career I have endeavored to be faithful to and exceed my ethical obligations pursuant thereto. As a judge, I have never made a contribution to a political organization as that term is defined by the Georgia Code of Judicial Conduct and my two corporate donations to Georgia Conservatives in Action, Inc. ("GCIA") in 2012 were clearly and expressly permitted by both the Georgia Code of Judicial Conduct and Georgia law. Moreover, GCIA is lawfully permitted to endorse candidates and my familiarity with any endorsement would have been irrelevant to the analysis of whether the two donations were permissible under the Georgia Code of Judicial Conduct and Georgia law. The donations to GCIA were clearly lawful and expressly not in violation of the Georgia Code of Judicial Conduct.

That said, I was not aware that GCIA had publically endorsed any political candidates. I have personally known the co-founders of this organization for nearly fifteen years, well prior to the existence of GCIA ,which was incorporated as a Georgia nonprofit corporation in 2009. I have known them to be active in local and state government public policy matters, educating the public on matters of public policy and encouraging others to help them in advocating for issues of importance to them and South Georgia. The Mission Statement of GCIA is to "Educate, Motivate and Activate grass roots conservatives to have an effective voice in government," and that is what I understood the group to do.

On the date you donated to GCIA, the only substantive post on the group's website—a Facebook page—consisted entirely of a link to an article urging Christians to rally behind Pastor Jack Hakimian, who was under fire for comparing homosexuality to, in the article's words, "other sinful lifestyles like drug abuse and witchcraft."

A. At the time you donated to GCIA, were you aware of the group's support for Pastor Hakimian?

Response: No. I have never heard of Pastor Jack Hakimian nor have I ever visited GCIA's Facebook page.

B. Did you worry that your support—as a sitting judge—for a group with GCIA's agenda could lead LGBT litigants to question your impartiality in their cases?

Response: Throughout my judicial career I have endeavored to strictly follow and exceed the Code of Judicial Conduct being ever mindful of questions regarding the appearance of impropriety or matters that could call in to question my impartiality. I am respectful that some might question my impartiality based on the two donations made by my former Superior Court Campaign Committee. However, the donations were made in response to two specific solicitations and were made with the sole specific intent to help with the costs of two events; an "Economic Development Summit" and another event sponsored by the organization in 2012. The contributions were expressly permitted by Georgia law and the Georgia Code of Judicial Conduct. I have never personally adopted, endorsed, or supported any general public policy positions advanced by this organization. The contributions were expressly permitted by Georgia law and the Georgia Code of Judicial Conduct, and I would be hopeful that my ten-year judicial career of being faithful to the rule of law and treating everyone that comes before me equally as both a trial judge and appellate judge would acquit me of any perceived bias generated by these two donations.

C. **Given that you donated from your judicial campaign account to GCIA, do you agree that homosexuality is akin to drug abuse and witchcraft? If not, can you provide the Committee with any evidence of any public statement that you believe LGBT Americans deserve the same rights as everybody else?**

Response: No. My ten-year record of judicial service demonstrates my commitment to ensuring that every litigant who comes before me deserves the same rights and is treated equally before the law with dignity and respect. It is my considered belief that public faith in a fair and impartial judiciary is dependent upon judges who are faithful to treating everyone equally.

Question for Judge Boggs

<u>Flag Vote Disavowal</u>

You expressed regrets to the Committee over your vote to keep the Confederate battle cross as a prominent part of the Georgia flag and explained your votes as motivated by the will of your constituents, who wanted a referendum on the issue.

A. **Please provide any public statements you made prior to your confirmation hearing that indicate this regret.**

Response: Respectfully, the vote occurred over thirteen years ago and during the intervening years, no one has ever sought to discuss this vote with me publically or privately, until my consideration for the district court. Until my confirmation hearing, I have never publicly discussed the vote or my personal position on the matter.

Questions for the Record
Senator Ted Cruz
Michael P. Boggs
Nominee, United States District Judge for the Northern District of Georgia
U.S. Senate Committee on the Judiciary

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I am faithful to the doctrine of *stare decisis* and the rule of law, being mindful and respectful of the proper and limited role of the judiciary within our democracy. Throughout my entire judicial career, I have committed to working hard, being prepared and diligent in managing my cases, and being mindful of the importance of each case to the litigants. I strive to decide cases fairly, impartially and without bias, and to apply binding precedent to the facts in a fair and impartial manner. Judges should be fair, open-minded, and not predisposed to any particular personal or public policy position and should treat all parties equally and with civility and respect. I am not familiar with the personal judicial philosophies of the Supreme Court Justices of the Warren, Burger, or Rehnquist courts sufficiently well to state which is most analogous with mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court has used originalism to interpret the Constitution and recently used the original public meaning approach in *District of Columbia v. Heller*, 554 U.S. 570 (2008). I would apply this and all other relevant precedent if confirmed.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: Under no circumstance would I overrule precedent. I have served as a state trial court judge and an appellate judge. I have adhered to the doctrine of *stare decisis* during the entirety of my judicial career. This ensures consistency and predictability to the rule of law. If confirmed, I am committed to continuing to honor the doctrine of *stare decisis* and to strictly following the controlling precedents established by the United States Supreme Court and the Eleventh Circuit Court of Appeals.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." ***Garcia v. San Antonio Metro Transit Auth.*****, 469 U.S. 528, 552 (1985).**

Response: During my judicial career, I have followed binding precedent fairly and impartially without regard to personal views or opinions. The *Garcia* case is binding precedent, and if

confirmed as United States District Court Judge, I would apply that precedent and the binding precedent of all cases of the United States Supreme Court and the Eleventh Circuit Court of Appeals fairly, impartially and without regard to personal views or opinions.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: United States Supreme Court precedent dictates that the Commerce Clause allows congressional regulation of commerce in three broad categories. Congress may (1) "regulate the use of the channels of interstate commerce"; (2) "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and, (3) "regulate those activities having a substantial relation to interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995); *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow binding Supreme Court and Eleventh Circuit precedent in analyzing the scope of Congress' authority under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's ability to issue executive orders or executive actions "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952); *see also Medellin v. Texas*, 552 U.S. 491, 524 (2008). These cases are binding precedent. If confirmed, I would apply these and other applicable Supreme Court precedent and Eleventh Circuit precedent defining the limits on the President's ability to issue executive orders or executive actions.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The United States Supreme Court has held that rights are "fundamental" for purposes of substantive due process when they are freedoms protected by the Constitution that are "objectively, deeply rooted in this Nation's history and tradition" and are "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted) (internal quotation marks omitted). If confirmed, I would apply this and all other applicable United States Supreme Court and Eleventh Circuit precedent to guide the disposition of matters involving questions of "fundamental" rights for purposes of the substantive due process doctrine.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The United States Supreme Court has held that a classification is subject to the heightened scrutiny analysis under the Equal Protection Clause when it "classifies by race, alienage, or national origin" or classifies "based on gender." *See City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Classifications that "impinge on personal rights protected by the Constitution," are also appropriate for the application of heightened

scrutiny. *Id.* If confirmed, I would follow United States Supreme Court and Eleventh Circuit precedent in determining what classifications are subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: Respectfully, as an appellate judge or if confirmed as a district judge, it would be inappropriate for me to express any opinion as to the anticipated use of racial preferences in public higher education. If confirmed as a United States District Court Judge, I would apply the precedent established in *Grutter* and in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), as well as binding precedent from the Eleventh Circuit, when addressing matters involving racial preferences in public higher education regardless of any personal views I may have.

THIRD DIVISION
BARNES, P. J.,
BOGGS and BRANCH, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules/

December 27, 2013

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A14A0800. IN THE INTEREST OF JANE DOE.

BARNES, Presiding Judge.

Seventeen-year-old Jane Doe petitioned the juvenile court to waive the requirement pursuant to OCGA § 15-11-110 et seq., that her parents or legal guardian be notified before she undergo a procedure to terminate her pregnancy. The juvenile court issued an order denying the petition, and Jane Doe appeals. For the reasons that follow, we affirm.

Under the Georgia Parental Notification Act ("the Act"), OCGA § 15-11-110 et seq., a physician is prohibited from terminating the pregnancy of a minor unless she is accompanied by a parent or legal guardian, or her parent or guardian is notified at least 24 hours before the impending procedure either in person, by telephone, or by certified mail. OCGA § 15-11-112 (a) (1).

A minor who does not want her parents to be notified of the upcoming procedure may petition the juvenile court to waive the Act notification requirements. OCGA § 15-11-112 (b). The Act further provides that the juvenile court shall waive the notification requirement if the court finds either that the abortion minor is mature enough and well-enough informed to make the decision in consultation with her physician, regardless of her parents' wishes, or that giving notice to a parent would not be in the minor's best interests. OCGA § 15-11-114 (c). Finally, if the juvenile court denies the petition to waive the notification requirement, the minor is entitled to an expedited appeal under rules promulgated by the appellate court. OCGA § 15-11-114 (e). See also Courts of Appeals Rule 45 (b), (d), (e), (j).

"The standard by which findings of fact are reviewed is the 'any evidence' rule, under which a finding by the trial court supported by any evidence must be upheld." (Citation and punctuation omitted.) *Singh v. Hammond*, 292 Ga. 579, 581 (2) (740 SE2d 126) (2013). On appeal, "this Court will not set aside the trial court's factual findings unless they are clearly erroneous, and this Court properly gives due deference to the opportunity of the trial court to judge the credibility of the witnesses." Id.

Following a hearing in which the appellant testified, the trial court concluded that

> while the unemancipated minor can articulate general information regarding the medical procedures available to terminate her pregnancy, she is neither mature enough nor well enough informed to make the abortion decision in consultation with her physician independently of the wishes of the minor's parent(s).

It further concluded that there was "insufficient evidence to support a conclusion that providing notice to the child's parents would not be in the child's best interest."

The appellant contends on appeal that the evidence did not support the trial court's conclusion that she lacked maturity to make an informed decision in consultation with her physician or that it was not in her best interest for her parents to not be notified of the abortion. We do not agree.

The appellant testified that she and her son lived with her mother, and that she had never made a major decision without her parents' input. Further, although she testified about what she believed the abortion procedure would entail, she did not demonstrate that she was informed beyond the most cursory information provided by someone she referenced as "they." She also testified that she wanted to get the abortion without her mother being notified because her mother told her that "if I ever wanted to get an abortion, then don't tell her, or get my own money for it." "[T]he reason she did not want to tell her parents did not stem from any fear that they would

abuse or harm her if they found out about the pregnancy." *In the Interest of E. H.*, 240 Ga. App. 91, 92 (524 SE2d 2) (1999) (The fact that appellant did not want to tell her parents about the abortion insufficient to show that it was in her best interest to waive parental notification.)

Based on the evidence in the record, we cannot say that the trial court erred in denying the appellant's request for a waiver of the parental notification required by OCGA § 15-11-112 (a) (1).

Judgment affirmed. Boggs and Branch, JJ., concur.