Nomination of Jeffrey Brown to the United States District Court for the Southern District of Texas
Questions for the Record
Submitted April 17, 2019

QUESTIONS FROM SENATOR FEINSTEIN

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

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

   Never.

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

   It is never proper for a district court judge to question Supreme Court precedent. A district court judge should faithfully apply all Supreme Court precedent.

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

   A district court should revisit or set aside its own decisions when they conflict with the precedent of the Supreme Court or the court of appeals where the district court is located. The Federal Rules of Civil Procedure provide standards for a district court to set aside its prior rulings in a specific case. *See* Fed. R. Civ. P. 59(e), 60.

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

   As a district court nominee, I would not presume to opine on when the Supreme Court should overturn its own precedent. The Supreme Court has instructed lower court judges to leave to "this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 484 (1989).

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." (The Law of Judicial

Precedent, Thomas West, p. 802 (2016))

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

As a nominee to a district court, all Supreme Court precedent is "super-stare decisis" or "superprecedent" because such decisions are binding on all district courts. If confirmed, I would faithfully apply *Roe v. Wade* and its progeny.

b. Is it settled law?

Yes.

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

Yes.

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

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

As a nominee for the district court, it would be inappropriate for me to comment on the merits of a dissenting opinion of the Supreme Court. See Canons 2, 3(a)(6), and 5, Code of Conduct for United States Judges. If confirmed as a district court judge, I would faithfully follow Supreme Court precedent.

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

In *Heller*, the Supreme Court found that "the right secured by the Second Amendment is not unlimited." 554 U.S. 570, 626–27 (2008). As a nominee for the district court, it would be inappropriate for me to comment on gun regulations that are currently the subject of litigation. See Canons 2, 3(a)(6), and 5, Code of Conduct for United States Judges.

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

As a nominee for the district court, it would be inappropriate for me to comment on the merits of an opinion of the Supreme Court. See Canons 2, 3(a)(6), and 5, Code of Conduct for United States Judges. If confirmed as a district court judge, I would faithfully follow Supreme Court precedent.

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

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

   If confirmed, I would follow all Supreme Court and Fifth Circuit precedent concerning the First Amendment rights of individuals and corporate entities. This includes the *Citizens United* case and any other applicable precedent.

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

   In *Citizens United*, the Supreme Court rejected what it called "the antidistortion rationale." 558 U.S. 310, 348–356 (2010). If I am confirmed, I will be bound by *Citizens United* and all Supreme Court precedent, and I will follow them faithfully. The scope of corporations' First Amendment rights is the subject of pending or impending litigation, therefore Canon 3(a)(6) of the Code of Conduct for United States Judges makes it inappropriate for me to comment further.

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

   In *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), the Supreme Court provided some guidance regarding the rights of closely held corporations under the Religious Freedom Restoration Act of 1993, but also noted the limits of its holding. If I am confirmed, I will be bound by *Hobby Lobby* and all Supreme Court precedent, and I will follow them faithfully. The existence and scope of corporations' religious freedom rights is the subject of pending or impending litigation, therefore Canon 3(a)(6) of the Code of Conduct for United States Judges makes it inappropriate for me to comment further.

6. On the 43rd anniversary of the Supreme Court's decision in *Roe v. Wade*, you posted links to the two dissenting opinions in the case on your personal Twitter account. You specifically quoted a line from Justice White's dissent that states: "I find nothing in the language or history of the Constitution" to support the Court's holding.

   a. Why did you decide to quote that particular portion of Justice White's dissent?

In Texas, judges are selected in partisan elections. As a Texas state judge who had to frequently stand for election, I used Twitter as a political campaign tool. As a federal judge, if I am confirmed, I will be prohibited by the Code of Conduct for United States Judges from engaging in any political activity. I have already ceased posting on Twitter and, if I am confirmed, I will shut down all my social-media accounts. *Roe v. Wade* is a longstanding, binding precedent of the Supreme Court. If confirmed, I will follow it faithfully.

b. Do you agree with Justice White that there is "nothing in the language or history of the Constitution" supporting the holding in *Roe*?

As a nominee for the district court, it would be inappropriate for me to comment on the merits of a dissenting opinion of the Supreme Court. See Canons 2, 3(a)(6), and 5, Code of Conduct for United States Judges. If confirmed as a district court judge, I would faithfully follow *Roe v. Wade* and all Supreme Court precedent.

7. You have criticized Supreme Court justices for assuming "too great a role in determining public policy." (Keynote Address, Brazoria County Republican Party Lincoln-Reagan Dinner (Feb. 10, 2018)) But as a justice of the Texas Supreme Court, you helped implement changes to procedural rules on judicial bypasses for minors seeking abortions. In a speech to a local Tea Party group, you noted that "the most significant rule change" was unanimously implemented by the Texas Supreme Court "without express instruction" from the state legislature. (Speaker, NE Tarrant Tea Party (Jan. 12, 2016))

a. Do you believe judges should have "a role in determining public policy"?

Aside from policy that is clearly within the province of the judiciary, such as policy associated with the courts' rulemaking authority and the administration of justice, no.

b. What is your justification for implementing a rule change from the bench "without express instruction" from the state legislature?

The Texas Legislature requested the Supreme Court of Texas to promulgate rules to implement a legislative amendment of the statutory scheme. The Court acted appropriately in performing that task.

8. In a September 2018 Facebook Live event with the group Empower Texans, you presented your standard for recusal as a judge. Specifically, you stated: "You can't come to a judge and say, 'What do you think about this issue?' because if that issue ends up in that judge's court…that judge probably ought to recuse him or herself…because it will look like they've pre-judged the case and you're supposed to come in eyes wide open with all options available to you." In 2015, you reportedly stated the Supreme Court was "legislat[ing] from the bench" in its decision in *Obergefell v. Hodges* and that, "if applied properly," the First Amendment should protect pastors, vendors, and other individuals who oppose same-sex marriage. (Chelsea Henderson, *Brown: Texas at mercy of SCOTUS rulings*, PORT ARTHUR

NEWS (Aug. 4, 2015)) These comments suggest you have pre-judged cases involving individuals' refusal to serve same-sex couples on the basis of their religious beliefs.

If you are confirmed, do you commit to recusing yourself from such cases?

If confirmed, when deciding whether I should recuse from any case, I will consult the recusal statute, 28 U.S.C. § 455, as well as the Code of Conduct for United States Judges and make a case-by-case determination of the proper course of action.

9. In your Senate Judiciary Questionnaire, you note that you have been a member of the LifeHouse of Houston Advisory Board since 2002. Until recently, you were identified as a member of the Advisory Board on LifeHouse's website. However, it appears you have now been removed from the site.

   a. **Why were you removed from LifeHouse of Houston's website?**

      I did not know until receiving these questions that my name had been removed from the website and I do not know why it was removed. I recently resigned from the advisory board; I suppose that may have prompted the removal of my name.

   b. **Did you, at any point, discuss your removal from LifeHouse's website with anyone in or associated with the organization?**

      No. I recently resigned from the advisory board, but I did not discuss the removal of my name from the website with anyone in or associated with the organization.

   c. **Have any of your judicial campaigns ever donated to, contributed to, or sponsored LifeHouse of Houston in any capacity?**

      Yes. My campaign has sponsored the organization's golf tournament. LifeHouse does not engage in political or policy-related advocacy. It is a maternity home open to minors as young as 12 years old. As stated on its website, "[a]ll residents benefit from cost-free lodging, meals, pre-natal care, life skills training, counseling, access to work/school, and God's overwhelming love."

10. You initially failed to disclose your campaign website, http://www.justicejeffbrown.com, in your Senate Judiciary Questionnaire. In a supplement to your Questionnaire sent on April 8, 2019, you provided the Committee with archived pages of the website. However, the Committee has since identified at least one archived page you did not disclose – a January 2014 press release announcing an endorsement for your judicial campaign from the Texas Right to Life PAC.

    a. **Please disclose any additional archived pages, including press releases, from your campaign website.**

       I am unaware of any additional archived pages.

b. Why did you not include the January 2014 press release in your April 8 supplement?

I did not know of the existence of the archived page containing the press release. The endorsement by Texas Right to Life PAC, along with many other endorsements I received when running for office, was disclosed in the pages I produced on April 8.

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

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

No.

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

Respectfully, I cannot—as this question seems to ask—recall every informal conversation I have had over the past three years, let alone the group affiliations of every person to whom I have spoken during that period. That said, I do not recall any such conversations.

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

If confirmed as a district court judge, I would follow all Supreme Court and Fifth Circuit precedent concerning administrative law.

12. You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 1997. The Federalist Society's "About Us" webpage explains the purpose of the organization as follows: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law." It says that the Federalist Society seeks to "reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It

also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community."

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

I did not write the Federalist Society's website and have never been employed by the Federalist Society. I am not aware of the Federalist Society's understanding of the quote referenced in the question. I have never had a discussion with any member or employee of the Federalist Society about this statement.

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

Please see my response to Question 12(a) above. I do not know how the Federalist Society seeks to reorder priorities in the legal system, if at all. I have never had a discussion with any member or employee of the Federalist Society about this statement.

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

Please see my response to Question 12(a) above. I am not aware of what the Federalist Society means by the phrase "traditional values." I have never had a discussion with any member or employee of the Federalist Society about this statement.

d. Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court?

The fact that I was under consideration for this nomination has come up in conversation with acquaintances I have who are Federalist Society members.

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

The Supreme Court has on various occasions made clear that courts may consider legislative history when the statutory language is ambiguous. *See, e.g., Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005).

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

No.

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

I received the questions on Wednesday, April 17, 2019. I personally drafted the answers after reviewing my SJQ and conducting limited research. I then shared my draft responses with the Office of Legal Policy at the Department of Justice, which offered suggestions and comments. Then, in light of those comments, I revised my responses as I thought appropriate.

Senator Josh Hawley
Questions for the Record

Jeffrey Vincent Brown
Nominee, U.S. District Court for the Southern District of Texas

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

The Supreme Court has at times looked to the original public meaning of the Constitution's text and considered that meaning relevant when interpreting it. If confirmed, I will faithfully follow all Supreme Court precedent, including precedent concerning the interpretation of the Constitution's text. Under the original-public-meaning doctrine, the Constitution should be interpreted according to the original meaning it had at the time of its enactment. The Supreme Court has said this analysis should be further "guided by the principle that '[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.'" *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)). Of course, as a district judge I would be bound to follow all precedent of the Supreme Court and the Fifth Circuit, regardless of whether that precedent looked to the original public meaning of the Constitution.

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

I would apply the judicial philosophy that has guided me as a judge for the past seventeen years. It includes four principles. First, belief in the supremacy and timelessness of the Constitution. Second, due regard for the separation of powers, which means—among other things—that courts should generally defer to the legislative will (leaving the making of policy to elected representatives). Third, adherence to *stare decisis*, which includes considering how courts have previously handled issues analogous to an issue of first impression. Fourth, devotion to the text of the law at issue, whether that law is a statute, a regulation, or a constitutional provision. The best evidence of what a writing means is the plain meaning of the words on the page. Adhering to the plain meaning of the text—whether it is a clause in a contract, a proscription in a statute, or a provision in a constitution—is a bedrock principle necessary to approaching a novel legal question. There is no room to insert personal policy preferences or take a results-oriented approach. These principles do not render judging either formulaic or easy, but they have served me well as the starting point to approaching any case.

3. **Can you discuss how you view the role of precedent in judicial decision making, and how you as a judge would approach cases involving precedents from the Supreme Court?**

Under the doctrine of *stare decisis*, courts treat issues before them the same as they have been treated in earlier decisions. Courts are bound by precedent laid down by higher courts. *Stare decisis* is critical to judicial decision making because it fosters predictability in the law and allows

individuals and industries to govern their affairs with confidence that the law will be applied consistently and fairly. As a justice on the Supreme Court of Texas, I have had occasion to consider exceptions to this doctrine, and have voted to overrule precedent only in the rarest of circumstances. However, as a district court judge, I will have no such discretion. My job, if I am confirmed, will be to faithfully apply and follow all precedent handed down by the Supreme Court and the Fifth Circuit Court of Appeals. I will do so without fail, following the admonition of former Fifth Circuit Judge Tom Gee, who said that judges "must either obey the orders of higher authority or yield up their posts to those who will."

4. In your view, what is the difference in how you approach a case as a policy maker or an advocate as opposed to how you would as a judge deciding a case?

An advocate's duty is to zealously represent his or her client by advancing any potentially meritorious argument that furthers his or her client's interests. This might include arguing for an interpretation or application of a statute or precedent with which the advocate personally disagrees. A policy maker's prerogative is to draft legislation or rules that reflect a desired public-policy outcome. As a judge, my responsibility is altogether different from both. My duty is to the law and its impartial and unbiased application to the parties appearing before me. My responsibility is to faithfully apply the law based on the plain meaning of the applicable text and a strict adherence to precedent. My decisions should be reached without reference to any desired outcome or personal policy or political preferences.

5. Are there circumstances when you believe judges should consider the policy results of their decisions when deciding a case? When might those circumstances arise?

No.

6. What is your understanding of the Supreme Court's precedents on substantive due process?

Entire books and semester-long law-school courses have been devoted to this topic. Substantive due process refers to the concept that the Fifth and Fourteenth Amendments protect certain fundamental rights not enumerated in the Constitution that are nonetheless implicit in the concept of ordered liberty. During the Court's *Lochner* era, the Court cited a "freedom to contract" implicit in the Fourteenth Amendment's Due Process Clause as the basis to strike down a spate of state labor laws. The Court began to scale back its substantive-due-process jurisprudence in the economic-regulation context in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), and eventually settled on a more deferential rational-basis standard of review. *See United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938). But when it came to government interference with rights and liberty interests the Court deemed fundamental, it held that substantive due process called for heightened scrutiny. *See, e.g.*, *Meyer v. Nebraska*, 262 U.S. 390 (1923) (right to direct the education and upbringing of one's children); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (right to contraception use); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (right to marital privacy); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942) (right to have children); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (right to contraception use); *Loving v.*

Virginia, 388 U.S. 1 (1967) (right to marry); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (right to bodily integrity); *Roe v. Wade*, 410 U.S. 113 (1973) (right to abortion); *Lawrence v. Texas*, 539 U.S. 558 (2003) (right to intimate sexual conduct); *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (right to same-sex marriage). Summarizing previous holdings, the Court explained in *Washington v. Glucksberg* that "we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition [and are] so rooted in the traditions and conscience of our people as to be ranked as fundamental and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." 521 U.S. 702, 720–21 (1997) (internal citations, quotations, and punctuation omitted). The Due Process Clause, the Court has held, "forbids the government to infringe" rights and liberty interests the Court has deemed fundamental "unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993).

Senator Dick Durbin
Written Questions for Jeffrey Brown
April 17, 2019

For questions with subparts, please answer each subpart separately.

Questions for Jeffrey Brown

1. On February 10, 2018, you gave a speech at the Brazoria County Republican Party Lincoln-Reagan dinner. At this speech, you said: "[d]ating back to the '60s, our unelected U.S. Supreme Court has consistently assumed too great a role in determining public policy." You went on to say: "because progressive ideas often lose when put to a majority vote, the Left has taken to circumventing majority will however it can. And its judges will not let the law stand in the way of doing their part to unilaterally enshrine those policies they cannot achieve [or] obtain at the ballot box."

   a. What were you referring to when you said that Supreme Court justices "consistently assumed too great a role in determining public policy"?

   In Texas, judges are selected in partisan elections. The speech from which that quotation is taken was a political speech to a political audience in the context of a political campaign. If confirmed, the Code of Conduct of United States Judges will prohibit me from engaging in any political activity. As a nominee for a federal bench, it would be inappropriate for me to express personal opinions on political matters.

   b. What were you referring to when you said "the Left has taken to circumventing majority will however it can"?

   Please see my answer to Question 1(a) above.

   c. What were you referring to when you said that "judges will not let the law stand in the way of doing their part to unilaterally enshrine those policies"?

   Please see my answer to Question 1(a) above.

   d. You also said in this speech: "Progressives don't distinguish between what the Constitution says and what they wish it said. After all, to them the Constitution is just an anachronism, and interpreting it in modern times is just a means to a desired end." **Do you think it is appropriate for a sitting judge to discuss "progressives" in this way? Wouldn't this cause litigants to believe that you have pre-judged legal issues that might appear before you in court?**

   Please see my answer to Question 1(a) above. Moreover, I have a 17-year record of well-regarded, award-winning judicial service and a well-earned reputation for judging fairly and impartially. That record should assure all litigants that, if confirmed, I will be a fair and impartial jurist on the federal bench.

2. In the summer of 2017 you gave a speech before the Bell County Young Republicans group in which you criticized what you called "an attempted coup d'etat by activist judges to halt President Trump's so-called travel ban." You said: "You don't have to be a lawyer to find it highly questionable that a judge should block, or have anything at all to say, about a duly elected president setting immigration policy based on the reports and intelligence shared exclusively with him by any number of federal agencies."

   a. Do you believe presidents have unreviewable authority in the immigration area?

   Please see my answer to Question 1(a) above. In addition, it would be inappropriate for me to opine on any issue that may one day come before me as a federal judge if I am fortunate enough to be confirmed.

   b. Is it your view that judges should not review presidential executive actions regarding immigration policy?

   Please see my answer to Question 2(a) above.

   c. Is it your view that judges should not review presidential immigration policies that are asserted by the executive to be based on intelligence information?

   Please see my answer to Question 2(a) above.

3. On August 4, 2015, you spoke before the Jefferson County Republican Party organization about the Supreme Court's decisions in *Obergefell v. Hodges* and *King v. Burwell* which upheld the Affordable Care Act's tax credits for insurance coverage. According to press reports you said: "What can Texas do about these rulings? Short of what some states did in 1861, there's not much that can be done. A constitutional amendment would solve this, sure, but I believe that's an up-hill battle. I'm not optimistic for this to turn around any time soon."

   a. What did you mean by your reference to 1861?

   In Texas, judges are selected in partisan elections. The news article in which that quotation appears covered a political town hall meeting organized by a state representative. I was invited to attend and answer questions about recent Supreme Court decisions. The format was a question-and-answer session in which I was responding to specific questions. One question concerned what Texas can do about rulings with which the questioner was displeased. What I meant by the reference is that Supreme Court decisions are final and binding in all 50 states.

   b. What in your view needed to be "turn[ed] around" with these cases?

I did not say that anything needed to be "turn[ed] around." I was conveying that Supreme Court decisions are final and binding in all 50 states.

4. In January 2016 you tweeted on your verified twitter account several comments about *Roe v. Wade*. For example, you tweeted a quote from Justice White's dissent saying: "I find nothing in the language or history of the Constitution to support the Court's judgment." You also described Justice White's dissent as "eloquent" and said Justice Rehnquist's dissent was "elegant" and "originalist." **What message were you trying to convey with these tweets about *Roe v. Wade*?**

   The tweets speak for themselves. *Roe v. Wade* is a longstanding, binding precedent of the Supreme Court. If confirmed, I will follow it faithfully. As a Texas state judge who had to frequently stand for election, I used Twitter as a political campaign tool. As a federal judge, if I am confirmed, I will be prohibited by the Code of Conduct for United States Judges from engaging in any political activity. I have already substantially curtailed my use of Twitter and other social media. If I am confirmed, I will shut down all my social-media accounts.

5. On September 12 last year you participated in a Facebook Live event with a group called Empower Texans. During this conversation you discussed your views on recusal. You said: "You can't come up to a judge and say, 'what do you think about this issue?' because if that issue ends up in a judge's court, that judge probably ought to recuse him or herself.…because it will look like they've pre-judged the case and you're supposed to come in eyes wide open with all options available to you."

   a. Have you ever said what you think about an issue in such a way that might cause litigants to believe you've pre-judged a case?

   I cannot think of an occasion on which I have said what I think about an issue in such a way that might cause litigants to believe I have pre-judged a case.

   b. If so, have you recused yourself from such cases?

   Please see my answer to Question 5(a) above.

   c. Would you commit, if confirmed, to recuse from cases involving executive actions on immigration policy or *Roe v. Wade*, given the public statements you have made on those matters?

   If confirmed, when deciding whether I should recuse from any case, I will consult the recusal statute, 28 U.S.C. § 455, as well as the Code of Conduct for United Judges and make a case-by-case determination of the proper course of action.

Nomination of Jeffrey Vincent Brown, to be United States District Court Judge for the Southern District of Texas
Questions for the Record
Submitted April 17, 2019

QUESTIONS FROM SENATOR COONS

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

   I would apply the framework set forth in the numerous Supreme Court decisions assessing these questions, including but not limited to *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Washington v. Glucksberg*, 521 U.S. 702 (1997), and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

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

      Yes, as directed by Supreme Court precedent.

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

      Yes, as directed by Supreme Court precedent. The inquiry would include sources such as the historical practice under the common law, the practice in the American colonies, the history of state statutes and judicial decisions, and long-established traditions. *See Washington v. Glucksberg*, 521 U.S. 702 (1997).

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

      Yes. I would be bound by Supreme Court and Fifth Circuit precedent. Absent a decision from those courts on the issue, I could look to decisions from other courts of appeals as persuasive authority.

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

      Yes. I would consider whether a similar right has previously been recognized by Supreme Court or circuit precedent.

   e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? *See*

Planned Parenthood v. Casey, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

Both *Casey* and *Lawrence* are binding Supreme Court precedent. I would apply them faithfully as well as all other binding precedent.

f. What other factors would you consider?

I would consider any other factors that are relevant under Supreme Court and Fifth Circuit precedent.

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

The Equal Protection Clause applies to both race-based classifications and gender-based classifications. *See, e.g., United States v. Virginia*, 518 U.S. 515 (1996); *Craig v. Boren*, 429 U.S. 190 (1976).

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

Any academic argument about the intent of the individuals who passed the Fourteenth Amendment does not affect the binding precedent cited above, which I would apply faithfully if I were fortunate enough to be confirmed as a lower court judge.

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

I am unaware why *United States v. Virginia* was filed or resolved at the time it was.

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

The Fourteenth Amendment requires that same-sex couples be afforded the right to marry "on the same terms as accorded to couples of the opposite sex." *Obergefell*, 135 S. Ct. at 2607.

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

Equality under the law is paramount in our legal system. However, it is my understanding that this question is the subject of litigation, therefore Canon 3(A)(6)of the Code of Conduct for United States Judges prohibits me from commenting.

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

   Yes, under the Supreme Court's decisions in *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

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

      Yes, under the Supreme Court's decisions in *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania. v. Casey*, 505 U.S. 833 (1992), and *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

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

      Yes, under the Supreme Court's decision in *Lawrence v. Texas*, 539 U.S. 558 (2003).

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

      Please see my responses to Questions 3, 3(a), and 3(b).

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

   a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

      If confirmed, I would follow all binding Supreme Court precedent and Fifth Circuit precedent. Where applicable precedent from those courts makes it appropriate to consider such evidence, I would do so in accordance with that precedent

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

The role of sociology, scientific evidence, and data depends on the nature of the judicial analysis at issue. I would consider binding Supreme Court and Fifth Circuit precedent to determine what role these sources should play in a given case.

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

a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

Obergefell is binding Supreme Court precedent. If confirmed, I will faithfully follow *Obergefell* and all other binding Supreme Court precedent. *See, e.g., Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1727 (2018) ("Our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth.").

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

I will faithfully apply Justice Kennedy's formulation of substantive due process whenever Supreme Court or Fifth Circuit precedent requires me to do so.

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

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

There are numerous legal scholars who have maintained that *Brown* is consistent with originalism, including Robert Bork, Michael McConnell, and Ilan Wurman. But from my perspective as a nominee to a district court, the only relevant consideration is that *Brown* is binding precedent which I will faithfully follow.

b. How do you respond to the criticism of originalism that terms like "'the freedom of speech,' 'equal protection,' and 'due process of law' are not precise or self-defining"? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism (last visited Apr. 15, 2019).

I have not studied this white paper. The quoted language seems to reflect the fact that determining the original public meaning of a constitutional provision can be difficult.

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

For a district judge, the original public meaning of a constitutional provision is dispositive when the Supreme Court has decided that it is dispositive. If the Supreme Court has decided that some other mode of interpretation is appropriate in interpreting a constitutional provision, that decision is dispositive. I would faithfully apply all binding Supreme Court precedents regardless of their methodology.

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

Please see my response to Question 6(c) above.

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

I would faithfully apply all relevant Supreme Court and Fifth Circuit precedent that identifies the appropriate sources to use in discerning the contours of a constitutional provision.

7. In a 2017 speech at the Bell County Young Republicans Coolidge Dinner, you referred to federal judges whose rulings halted the Trump administration's travel ban as "activist judges" who "attempted a coup d'etat," and you stated that "[t]heir reasoning is not based in law but in their belief that we have an illegitimate president."

a. Please explain why you believe these judges are "activist judges."

In Texas, judges are selected in partisan elections. The speech from which that quotation is taken was a political speech to a political audience in the context of a political campaign. If confirmed, the Code of Conduct of United States Judges will prohibit me from engaging in any political activity. As a nominee for a federal bench, it would be unfitting for me to express personal opinions on political matters.

b. Please explain why you believe these judges' reasoning was "not based in law but in their belief that we have an illegitimate president."

Please see my answer to Question 7(a) above.

c. Please explain why you believe these rulings constituted an attempted "coup d'etat"?

Please see my answer to Question 7(a) above.

d. Is it appropriate for a federal judge to determine whether an administration's policy violates the Constitution or federal immigration law when a litigant states a claim that it does?

It is the duty of a federal judge to decide the cases that come before him or her according to the law.

8. Last year, in a speech at the Brazoria County Republican Party Lincoln-Reagan Dinner, you said that "[d]ating back to the '60s," the "Supreme Court has consistently assumed too great a role in determining public policy," and "the will of the people matters less and the will of a privileged elite matters more."

a. Which decisions were you referring to when you made this statement?

Please see my answer to Question 7(a) above.

b. Do you believe that *Brady v. Maryland*, *Miranda v. Arizona*, *Gideon v. Wainwright*, or *Loving v. Virginia* prioritized the will of the privileged elite?

Those cases are all binding Supreme Court precedent which, if confirmed, I will faithfully follow.

9. In a 2015 speech at a Republican Party rally, you expressed disapproval of the Supreme Court's rulings on the Affordable Care Act and same-sex marriage. You said, "What can Texas do about these rulings? Short of what some states did in 1861, there's not much that can be done. A constitutional amendment would solve this, sure, but I believe that's an up-hill battle. I'm not optimistic for this to turn around any time soon."

a. Do you believe that the Affordable Care Act is unconstitutional?

The Supreme Court has upheld the constitutionality of the Affordable Care Act. If confirmed, I will follow all Supreme Court precedent.

b. Do you support a constitutional amendment to overturn *Obergefell*?

Obergefell is a binding Supreme Court precedent which, if confirmed, I will faithfully follow. As a nominee for a federal bench, it would be inappropriate for me to comment about my personal feelings on political matters. Moreover, such feelings would play no role in any decision I might be called upon render if I am confirmed.

10. In the same 2015 speech, you said that it was "good news" that strict scrutiny was not applied in *Obergefell* because "[i]f strict scrutiny is not available or is not applied, the government only has to offer a rational reason. In those cases where the standard is not strict scrutiny, the policy is upheld over 90 percent of the time."

    a. What is the standard of review applicable in a case involving gender discrimination?

    In *Craig v. Boren*, 429 U.S. 190 (1976), the Supreme Court held that sex-based classifications are subject to intermediate scrutiny. If confirmed as a district judge, I will faithfully follow *Obergefell*, *Craig*, and all Supreme Court precedent.

    b. What would you say to an LGBT individual seeking to enforce his/her rights under *Obergefell* to assure him/her that you would be fair and impartial in hearing the case?

    I have a 17-year record of well-regarded, award-winning judicial service and a well-earned reputation for judging fairly and impartially and for adhering to *stare decisis*. That record should assure all litigants that, if confirmed, I will be a fair and impartial jurist on the federal bench.

11. In a 2016 speech to the NE Tarrant Tea Party, you noted that the Texas Supreme Court, the court on which you have served since 2013, unanimously implemented rules governing judicial bypass procedures that allow minors to obtain an abortion without parental consent, including a rule that a judicial bypass will be deemed denied if the judge does not rule on it within five days. You stated in your remarks that the "deemed denied" language was not included in the statute."

    a. Why did you support including the "deemed denied" provision in the court's rules?

    The deliberations of the justices of the Supreme Court of Texas are confidential by law.

    b. Did you meet with any reproductive rights organizations or attorneys with experience representing minors seeking a judicial bypass to discuss this provision prior to its inclusion?

    Yes. The Texas Supreme Court consulted with a lawyer at Jane's Due Process, an organization that represents minors seeking a judicial bypass.

    c. What would you say to a minor seeking a judicial bypass based on Supreme Court precedent to assure her that you would be fair and impartial in hearing the case?

    I have a 17-year record of well-regarded, award-winning judicial service and a well-earned reputation for judging fairly and impartially. That record should assure all litigants that, if confirmed, I will be a fair and impartial jurist on the federal bench.

Questions for the Record for Jeffrey Vincent Brown
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

   a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

   No.

   b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

   No.

2. In February 2018, you gave a keynote address at the Brazoria County Republican Party Lincoln-Reagan Dinner. In the speech you stated, "I do want to talk about the primary argument I heard from those who chose to support [Donald Trump], whether enthusiastically or reluctantly. *We have to save the Supreme Court*. A vacant Supreme Court seat, which the Republican majority in the U.S. Senate thankfully would not allow President Obama to fill, had the potential to shape the Court's jurisprudence for decades to come."

   a. Is it your view that Majority Leader McConnell acted properly in "not allow[ing] President Obama to fill" a Supreme Court vacancy by refusing to hold a hearing for President Obama's Supreme Court nominee Merrick Garland for nearly a year?

   As a federal judicial nominee, it would be inappropriate for me to provide personal opinions about such political matters.

   b. What did you mean by your statement: "*We have to save the Supreme Court*."? You called it "a good argument."

   I did not state that I believed the Supreme Court needed saving. I said that "*We have to save the Supreme Court*" was "the primary argument I heard from those who chose to support [Trump for President], whether enthusiastically or reluctantly."

3. In your February 2018 speech at the Brazoria County Republican Party Lincoln-Reagan Dinner, you also stated that those "on the Left" reject the philosophy of judicial restraint and claimed that "its judges will not let *the law* stand in the way of doing their part to unilaterally enshrine those polices they cannot achieve obtain at the ballot box." You asserted that "Progressive judges" fail to "rely primarily on the text [of the Constitution] itself," while claiming that "Conservatives judges" follow the law because they "don't believe there is any place for their preferences."

You made these comments categorizing judges into partisan categories while you were a sitting state court judge. Is it your view that Republican judges follow the law, and judges "on the Left" do not?

No. In fact, I am proud to have worked as a law clerk for Justice Jack Hightower on the Supreme Court of Texas. Justice Hightower was a Democrat who had served, as a Democrat, in the Texas Legislature and Congress. He, like many other Democrats I have known, was a good judge who followed the law.

4. At a 2017 keynote address at the Bell County Young Republicans' Coolidge Dinner, you noted that "Texas is one of only seven states to have open, partisan elections," and implied that such a system of electing judges provided more accountability for judges. While you claimed that you were not there to "debate the wisdom of either system" of appointing or electing judges, you stated, "[a]s Republicans, I know you care about the Constitution." You then told the attendees that they decide who Texas state court judges will be, while pointing out that "[f]ederal judges don't answer to you." In your speech, you repeatedly criticized "progressive judges," including the federal judges who initially blocked the President's travel ban, calling them "activist judges" attempting a "coup d'etat." Referring to these federal judges' decisions, you stated, "You've heard of fake news. Welcome to fake law."

   a. You've criticized the lack of accountability of judges who are appointed by the President, accused "federal judges [of] undermin[ing] the president," and spoken about judges in highly partisan terms. In light of these views, please explain why you want to become a federal judge.

   The thrust of my comments in that speech concerned my belief that judges should practice judicial restraint. As a judge, I have always strived to practice judicial restraint. I want to be a United States District Judge because I enjoyed being a trial judge, and I would like to do it again.

   b. Given your public statements on "conservative judges" and "progressive judges," what can you point to in your record that would enable litigants to have confidence that you will be a nonpartisan, fair-minded judge?

   I have a 17-year record of well-regarded, award-winning judicial service and a well-earned reputation for judging fairly and impartially. That record should assure all litigants that, if confirmed, I will be a fair and impartial jurist on the federal bench.

   c. Please provide a definition of your use of the term "fake law."

   In Texas, judges are selected in partisan elections. The speech from which that quotation is taken was a political speech to a political audience in the context of a political campaign. If confirmed, the Code of Conduct of United States Judges will prohibit me from engaging in any political activity. As a nominee for a federal bench, it would be inappropriate for me to express personal opinions on political matters.

   d. Is it your view that the people do not need to follow judicial decisions that you or others classify as "fake law"?

   Please see my answer to Question 4(c) above.

e. Do you think calling the judicial decisions of federal judges "fake law" could undermine the legitimacy of courts and public confidence in the judicial system?

Please see my answer to Question 4(c) above.

5. In 2016, you gave a speech to the NE Tarrant Tea Party where you talked about the role the Texas Supreme Court, on which you serve, played in drafting rules to implement what you called a "pro-life package of bills." You stated that one of the most significant rules you helped enact was changing the default rule in judicial bypass procedures that allow minors to obtain an abortion without parental consent. The rule changed the default outcomes so that if a judge failed to rule on a judicial bypass request within a certain number of days, the request would be deemed denied, instead of granted. In highlighting this rule, you pointed out that the Texas Right to Life "applaud[ed]" the new rule and had identified this rule change as a "top priority." You concluded your speech by stating that you "hope[d]" that the audience "appreciate[d] . . . the hard work the [Texas Supreme] Court does . . . that it is able to do on this issue."

In addition, in your campaign to become a Texas Supreme Court Justice, it appears your campaign issued a press release announcing the Texas Right to Life PAC's endorsement of your candidacy. The press release stated:

> Justice Jeff Brown, who currently serves on the Texas Supreme Court, announced the endorsement today of the Texas Right to Life PAC. In announcing the endorsement, Dr. Joseph Graham, President of Texas Right to Life, said, "Justice Brown has long been a friend of Texas Right to Life and to the Pro-Life cause. He understands that the right to life, liberty and the pursuit of happiness espoused in our Declaration of Independence is the foundation of freedom. Justice Brown is a defender of the defenseless and the type of courageous leader upon whom all Texans can depend."
>
> Said Justice Jeff Brown, "I'm proud and honored to receive the endorsement of the largest pro-life organization in Texas. Texas Right to Life is one of the strongest grassroots organizations of its kind in the country. They are devoted to championing life at every stage, and this is a cause I applaud and support."

a. As a Texas Supreme Court Justice, in discussing the rules enacted by the Texas Supreme Court, why did you highlight the fact that one of the rules was a "top priority" for the Texas Right to Life?

Please see my answer to Question 4(c) above.

b. Do you believe a woman's right to have an abortion is guaranteed by the U.S. Constitution?

The Supreme Court held in *Roe v. Wade* that a woman's right to have an abortion is guaranteed by the U.S. Constitution. If confirmed, I will faithfully follow *Roe v. Wade* and all Supreme Court precedent.

c. Is it your view that you are "proud and honored to receive the endorsement of" Texas Right to Life?

Over the course of many election campaigns, I was endorsed by a wide variety of people and organizations. As most candidates are, I was generally grateful for those endorsements.

d. Is it your view that opposing abortions "is a cause [you] applaud and support"?

As a nominee for a federal bench, it would be inappropriate for me to express personal opinions on political matters. If confirmed, I will faithfully follow *Roe v. Wade* and all Supreme Court precedent.

e. Given your prior public statements opposing women's reproductive rights and actions to narrow access to abortions as a state court judge, will you recuse yourself in any cases involving abortions, should you be confirmed as a federal judge?

If confirmed, when deciding whether I should recuse from any case, I will consult the recusal statute, 28 U.S.C. § 455, as well as the Code of Conduct for United States Judges and make a case-by-case determination of the proper course of action.

6. In 2016, you wrote a concurring opinion in a case where a same-sex couple challenged state laws defining marriage as between a man and a woman. In your concurrence, you criticized the plaintiffs' counsel, accusing him of "deliberate and premeditated misuse of the Texas justice system." While the case was dismissed as moot in light of *Obergefell v. Hodges*, you wrote separately to emphasize "that marriage in Texas was limited to the union of one man and one woman. So says the Texas Constitution, the Texas Family Code, and Texas common law. Indeed, so says all of pre–21st–century American history and all of Western Civilization from the beginning of Christendom to the modern day."

a. Do you believe that same-sex married couples have equal rights under the law as other married couples have?

The Supreme Court has held exactly that in *Obergefell*. If confirmed, I will faithfully follow *Obergefell* and all Supreme Court precedent.

b. Is it your view that marriage should be "limited to the union of one man and one woman"?

As a nominee for a federal bench, it would be inappropriate for me to express personal opinions on political matters.

Nomination of Jeffrey Vincent Brown
United States District Court for the Southern District of Texas
Questions for the Record
Submitted April 17, 2019

QUESTIONS FROM SENATOR BOOKER

1. In February 2018, you gave a speech at the Brazoria County Republican Party Lincoln-Reagan Dinner and spoke about the importance of electing Donald Trump as President of the United Stated in the context of Supreme Court.[1] In the speech, you said:

> We have to save the Supreme Court. A vacant Court seat, which the Republican majority in the U.S. Senate thankfully would not allow President Obama to fill, had the potential to shape the Court's jurisprudence for decades to come. An Obama or Clinton appointment, on the other hand, would have put a liberal voting bloc in the driver's seat for a generation or more.[2]

   a. Why did you believe the Supreme Court needed saving?

   I did not say in that speech that I believed the Supreme Court needed saving. I said that "*We have to save the Supreme Court*" was "the primary argument I heard from those who chose to support [Trump for President], whether enthusiastically or reluctantly."

   b. Based on your comments, it appears you believed that Senate Republicans acted appropriately in denying Chief Judge Merrick Garland's nomination a hearing and a vote. Is this correct? If so, please explain your views.

   Respectfully, I do not agree that my comments indicate that I believed that Senate Republicans acted appropriately in denying Chief Judge Merrick Garland's nomination a hearing and a vote. Moreover, as a federal judicial nominee, it would be unfitting for me to provide personal opinions about such political matters.

2. In the same February 2018 speech, you said:

> Dating back to the '60s, our unelected U.S. Supreme Court has consistently assumed too great a role in determining public policy. The result is that the will of the people matters less and the will of a privileged elite matters more. The problem lies in a fundamental misunderstanding, or outright abandonment, of the separation of

[1] Keynote address, Brazoria County Republican Party Lincoln-Reagan Dinner (Feb. 10, 2018) (SJQ Attachment 12(d) at pp. 1567-76).
[2] Id. at 1570.

> powers provided for in the Constitution and the proper role of judges as interpreters of law, not makers of law.[3]

In a speech you gave three years earlier to the Jefferson County Republican Party, you seemed to express disapproval of the U.S. Supreme Court's rulings in *King v. Burwell* and *Obergefell v. Hodge*. You said, "What can Texas do about these rulings? Short of what some states did in 1861, there's not much that can be done. A constitutional amendment would solve this, sure, but I believe that's an up-hill battle. I'm not optimistic for this to turn around any time soon."[4]

a. Were you suggesting that states succeed from the Union or start a civil war in response to these Supreme Court decisions?

No, certainly not; I was not suggesting that states secede from the Union or start a civil war for any reason.

b. When you gave your 2018 speech, did you believe the Supreme Court was assuming too great a role in determining public policy when it decided *King v. Burwell*? Please explain why.

As a federal judicial nominee, it would be unfitting for me to express personal opinions about particular Supreme Court decisions. If confirmed, I will faithfully apply all Supreme Court precedent.

c. When you gave your 2018 speech, did you believe the Supreme Court was assuming too great a role in determining public policy when it decided *Obergefell v. Hodges*? Please explain why.

As a federal judicial nominee, it would be unfitting for me to express personal opinions about particular Supreme Court decisions. If confirmed, I will faithfully apply all Supreme Court precedent.

3. In September 2018, you shared your views on when judges should recuse themselves in various cases. You said:

> You can't come to a judge and say, 'What do you think about this issue?' because if that issue ends up in that judge's court . . . that judge probably ought to recuse him or herself . . . because it will look like they've pre-judged the case[5]

a. You once accused the Supreme Court of "legislat[ing] from the

[3] *Id.* at 1571.
[4] Chelsea Henderson, *Brown: Texas at mercy of SCOTUS rulings*, PORT ARTHUR NEWS (Aug. 4, 2015), (SJQ Attachment 12(d) at p. 1999).
[5] Speaker, A Conversation with Justice Jeff brown, Empower Texans 9Sept. 12, 2018), *video available at* https://www.facebook.com/empowertexans/videos/a-conversation-with-justice-jeff-brown/2117152808602104/.

bench" in *Obergefell v. Hodges*.[6] According to your own recusal standard you laid out in 2018, you have pre-judged issues relating to same-sex marriage. Will you commit to recuse yourself in any case dealing with same-sex marriage? If not, please explain.

I have not pre-judged issues relating to same-sex marriage. If I am fortunate enough to be confirmed, I will faithfully apply all Supreme Court precedent. I will also, when deciding whether I should recuse from any case, consult the recusal statute, 28 U.S.C. § 455, as well as the Code of Conduct for United Judges and make a case-by-case determination of the proper course of action.

b. In the past, you have tweeted about the Supreme Court's decision in *Roe v. Wade*. You praised Justice Rehnquist's dissent and called it "elegant" and "originalist."[7] In another tweet, you quoted a portion of Justice White's dissent that said, "I find nothing in the language or the history of the Constitution to support the Court's judgement."[8] A reasonable person would conclude that you have – pre-judged issues relating to *Roe v. Wade* and abortion. Do you commit to recuse yourself in any case dealing with abortion? If not, please explain.

I have not pre-judged issues relating to *Roe v. Wade* and abortion. If I am fortunate enough to be confirmed, I will faithfully apply all Supreme Court precedent. I will also, when deciding whether I should recuse from any case, consult the recusal statute, 28 U.S.C. § 455, as well as the Code of Conduct for United Judges and make a case-by-case determination of the proper course of action.

4. In 2017, you gave a keynote address to the Bell County Young Republicans at their 2017 Coolidge Dinner. In the speech, you said, "For every group of snowflakes that preens for the cameras, disavowing their patriotism, their privilege, and even their pronouns, there is another group likes this one. You don't see yourselves as 'entitled' to anything, except your God-given liberty. You love your country and understand why it is exceptional." [9]

a. Who were you referring to when you said, "group of snowflakes that preens for the cameras, disavowing their patriotism, their privilege, and even their pronouns"? Please be specific in your answer.

I was not referring to anyone in particular.

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[6] Henderson, *supra* note 4.
[7] https://twitter.com/judgejeffbrown/status/690905585307353091.
[8] https://twitter.com/judgejeffbrown/status/690690001416286209; https://twitter.com/judgejeffbrown/status/690972327501115392
[9] Keynote Address, 2017 Coolidge Dinner, Bell County Young Republicans (SJQ Attachment 12(d) at pp. 1577).

5. In the same speech, you spoke about President Trump's Muslim ban. You said:

> The most obvious has been an attempted coup d'etat by activist judges to halt President Trump's so-called travel ban. Their reasoning is not based in law but in their belief that we have an illegitimate president. You don't have to be a lawyer to find it highly questionable that a judge should block, or have anything at all to say, about a duly elected president setting immigration policy based on the reports and intelligence shared exclusively with him by any number of federal agencies. Here's what these courts are saying: Regardless of what the text of the executive order actually says, regardless of the president's inherent authority in this arena, comments *candidate* Trump said can be taken as discriminatory against Muslims. These comments, whatever they were, made before the president was even the president, and of course having no bearing whatsoever on the actual policy itself, are being leveraged by federal judges to undermine the president in one of his most fundamental duties: securing our borders and keeping us safe. Under this twisted logic, the exact same executive order, if issued by President Obama, would not be unconstitutional, because he certainly never called out Islamic terrorism. This double standard is not based on the law but in petty defiance of the president. You've heard of fake news. Welcome to fake law. [10]

During then-candidate Trump's presidential campaign, he issued the following statement in 2015: "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on."[11] Not long after, in a television interview, he justified the policy proposal by saying that President Franklin Roosevelt "did the same thing" with respect to the internment of the Japanese Americans during World War II.[12] Additionally, soon after the Muslim ban was initially announced, former New York City Mayor Rudy Giuliani said during an interview that "President Trump had previously asked him about legally implementing a 'Muslim ban.'" [13]

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[10] *Id.* at p. 1589.

[11] Jenna Johnson, *Trump calls for "total and complete shutdown of Muslims entering the United States*, WASH. POST (Dec. 7, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total- and-complete-shutdown-of-muslims-entering-the-united-states/?utm_term=.d82ed41bc7de.

[12] Adam Litak, *Travel Ban Case Is Shadowed By One of Supreme Court's Darkest Moments*, N.Y. TIMES (Apr. 16, 2018), https://www.nytimes.com/2018/04/16/us/politics/travel-ban-japanese-internment-trump-supreme-court.html.

[13] Rebecca Savranksy, *Giuliani: Trump asked me how to do a Muslim ban 'legally'*, THE HILL (Jan. 29, 2017), https://thehill.com/homenews/administration/316726-giuliani-trump-asked-me-how-to-do-a-muslim-ban-legally

a. You clearly defended President Trump's Muslim ban in your 2017 keynote address. Was it your position at the time of the speech that President Trump's executive orders were not intended to be a ban on Muslims entering the United States?

As a federal judicial nominee, it would be unfitting for me to provide personal opinions about such political matters.

b. Is it unreasonable for someone to believe President Trump intended to enact a Muslim ban based on his previous statements and Mr. Giuliani's statement?

As a federal judicial nominee, it would be unfitting for me to provide personal opinions about such political matters.

c. President Trump pointed to the internment of Japanese Americans to justify his call for a "total and complete shutdown of Muslims entering the United States." Do you believe that *Korematsu v. United States* was correctly decided?

As a federal judicial nominee, it would be unfitting for me to express personal opinions about particular Supreme Court decisions. If confirmed, I will faithfully apply all Supreme Court precedent. I would note, however, that in writing for the Court in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), Chief Justice John Roberts stated that *Korematsu* was wrongly decided. *Id.* at 2423.

6. You have given numerous speeches where you have criticized so-called "liberal" judges. What assurances can you give this Committee that you will be a fair and impartial jurist given your extensive track record criticizing progressives, liberals, and the causes they support?

I have criticized judicial approaches that I believe are beyond the proper confines of a judge's duty and authority. I do not have an "extensive track record criticizing progressives, liberals, and the causes they support." I have a 17-year record of well-regarded, award-winning judicial service and a well-earned reputation for judging fairly and impartially. That record should assure the Committee that, if confirmed, I will be a fair and impartial jurist on the federal bench.

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

The Supreme Court has looked to the original public meaning of texts and considered that meaning relevant when interpreting those texts in certain contexts. Whatever approach the Supreme Court has taken in a particular context, a lower-court is bound to follow it. If confirmed, I will faithfully follow all Supreme Court precedent.

8. You once spoke about your own judicial philosophy and said you had "a devotion

to textualism."[14] Do you consider yourself a textualist? If so, what do you understand textualism to mean?

The Supreme Court has repeatedly stated that statutory interpretation begins with the text, and where the text is clear, that is the end of the inquiry. *See, e.g., Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). If confirmed, I will faithfully follow all Supreme Court precedent, including its approach to statutory interpretation.

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

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

    The Supreme Court has stated that considering legislative history may be appropriate when the text of a statute is ambiguous. *See, e.g., Matal v. Tam*, 137 S. Ct. 1744, 1756 (2017). If confirmed, I will faithfully follow all Supreme Court precedent, including its approach to statutory interpretation and the use of legislative history.

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

    Please see my response to Question 9(a) above.

10. According to a Brookings Institution study, blacks and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.[15] Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.[16] These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.[17] In my home state of New Jersey, the disparity between

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[14] Brazoria, *supra* note 1, at 1573.
[15] Jonathan Rothwell, How the War on Drugs Damages Black Social Mobility, BROOKINGS INST. (Sept. 30, 2014), https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility.
[16] *Id.*
[17] Ashley Nellis, The Color of Justice: Racial and Ethnic Disparity in State Prisons, SENTENCING PROJECT (June 14, 2016), http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons.

blacks and whites in the state prison systems is greater than 10 to 1. [18]

11.

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

Yes.

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

I have attended a judicial-education seminar that covered the topic of implicit racial bias in our justice system.

c. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.[19] Why do you think that is the case?

I have not studied this issue.

d. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences. [20]Why do you think that is the case?

I have not studied this issue.

e. What role do you think federal district judges, who handle difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

In my 17 years as a judge, racism has had no place in my courtroom. If confirmed, it will continue to have none. All judges should be mindful of the potential for bias—implicit and explicit—in their courthouses and in the cases before them. In terms of addressing racial bias in the criminal justice system, however, judges are not policy makers and can decide only cases or controversies before them. If confirmed, I would uphold my judicial oath of office to "administer justice without respect to persons," to "do equal right to the poor and to the rich," and to decide cases "faithfully and impartially" under the laws of our nation. 28 U.S.C. § 453.

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[18] *Id.*

[19] U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 BOOKER REPORT 2 (Nov. 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research- publications/2017/20171114_Demographics.pdf.

[20] Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

12. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.[21] In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.[22]

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

       I have not studied this issue.

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

       I have not studied this issue.

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

    Yes.

14. Would you honor the request of a plaintiff, defendant, or witness in your courtroom, who is transgender, to be referred in accordance with their gender identity?

    Yes.

    a. You once said, "For every group of snowflakes that preens for the cameras, disavowing their patriotism, their privilege, and even their pronouns, there is another group likes this one. You don't see yourselves as 'entitled' to anything, except your God-given liberty. You love your country and understand why it is exceptional."[23] When you referred to people "disavowing pronouns" were you referring to transgender people?

       I was not referring to anyone or any group in particular.

    b. Do you recognize the insensitive and inappropriate nature of your comment, particularly for someone who is nominated to a lifetime appointment on the federal judiciary?

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

[22] *Id.*

[23] Keynote Address, *supra* note 9.

The quoted language is taken from a speech I delivered while running to retain my seat in a partisan judicial election. My remarks were appropriate in that context and were not meant to be insensitive.

c. If you were to be confirmed, do you understand how transgender people may question your objectivity based on this comment?

My statement was not directed toward anyone or any group in particular. During my 17 years of service as a trial and appellate judge, I have treated every party that appears before my court with impartiality, respect, and dignity. If confirmed, I will continue to do so as a federal judge.

d. Are you willing to disavow that comment?

Because I do not agree that the comment was directed in an insensitive fashion to anyone or any group in particular, I do not disavow it.

15. Do you believe that *Brown v. Board of Education* [24] was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Brown was a unanimous decision of the Supreme Court, has been roundly praised by legal scholars of all stripes, and is binding precedent on all lower courts. If confirmed, I will faithfully follow it. Beyond that, it would be inappropriate to opine on whether *Brown*, or any other decision of the Supreme Court that I would be bound to follow, was correctly decided. *See, e.g.*, Nomination of Elena Kagan to Be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary, 111th Cong. 64 (2010) ("I think that . . . it would not be appropriate for me to talk about what I think about past cases, you know, to grade cases.") (statement of Hon. Elena Kagan).

16. Do you believe that *Plessy v. Ferguson*[25] was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

In *Brown v. Board of Education*, the Supreme Court overruled *Plessy v. Ferguson* and struck down the doctrine of "separate but equal," noting that it "has no place" in American law. *Brown*, 347 U.S. 483, 494-95 (1955). Please see my response to Question 14.

17. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

No.

[24] 347 U.S. 483 (1954).
[25] 163 U.S. 537 (1896).

18. President Trump has stated on Twitter: "We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came."[26] Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

The Supreme Court has held that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Beyond that, as a judicial nominee, it would be inappropriate under Canon 3(A)(6) of the Code of Conduct for United States Judges to answer this question, which relates to the subject of pending or impending litigation.

[26] Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), https://twitter.com/realDonaldTrump/status/1010900865602019329.

Questions for the Record from Senator Kamala D. Harris
Submitted April 17, 2019
For the Nomination of

Jeffrey Brown, to the U.S. District Court for the Southern District of Texas

1. In 2016, on the 43rd anniversary of *Roe v. Wade*, you tweeted in praise of the dissenting opinions and called the decision "an improvident and extravagant exercise of the power of judicial review."

    a. **Do you stand by these statements today?**

    I did not call *Roe v. Wade* "an improvident and extravagant exercise of the power of judicial review." That is what Justice Byron White said in his dissent.

    b. **If confirmed, will you commit to following the Supreme Court precedents in *Roe* and *Casey*?**

    Yes. I will follow *Roe* and *Casey* and all Supreme Court precedent.

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

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

    Given the likelihood that cases involving abortion may come before me in both my current position and as a district judge if I am confirmed, I cannot answer this question. If confirmed, I will follow all Supreme Court and Fifth Circuit precedent on this subject.

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

    Please see my answer to Question 2(a) above.

3. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

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

If confirmed to serve as a district judge, I would devote careful thought to every sentencing proceeding, working to ensure that the sentence imposed is "sufficient, but not greater than necessary, to comply with the purposes" of federal sentencing set forth by Congress. *See* 18 U.S.C. § 3553(a). To achieve that goal, I would consult the governing statutes and applicable precedent, the presentence report of the probation officer, *see* 18 U.S.C. § 3552, the advisory Sentencing Guidelines and other factors set forth in § 3553(a), the arguments of the parties, and the statements of victims or witnesses. I fully appreciate the weighty nature of sentencing and the care it requires, and I would faithfully follow the law and my judicial oath in carrying out this responsibility.

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

Please see my answer to Question 3(a) above.

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

Supreme Court precedent and the advisory Sentencing Guidelines explain the circumstances and considerations that can justify a departure or variance from the Guidelines. Part K of Section 5 of the Guidelines lists specific circumstances that can justify a departure from the advisory Guidelines range. Under Supreme Court precedent, the factors listed in 18 U.S.C. § 3553(a) may also call for varying from the advisory Guidelines range.

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

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

I believe that the inclusion of mandatory minimum sentences in criminal statutes is reserved to Congress's judgment. As a pending judicial nominee, it would be unfitting for me to comment on this matter. See Code of Conduct for United States Judges, Canons 2, 3(A)(6), 5. If confirmed, I would be required to follow the law of mandatory minimums regardless of my personal view on the deterrent effect of such minimum sentences.

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

[1] https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf

Please see my answer to Question 3(d)(i) above.

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

Please see my answer to Question 3(d)(i) above.

iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.[2] **If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

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

   I am aware that mandatory minimum sentences have generated significant controversy and debate. I am also aware that judges have faced criticism over using judicial opinions as opposed to other channels to publicize their disagreement with a law. If I am confirmed, I would evaluate each case individually and would carefully consider the law and my ethical obligations if confronted with the circumstances hypothesized in this question.

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

   The power to charge individuals with crimes lies exclusively with the Executive Branch. As a judge, I would be bound to respect the separation of powers built into the constitutional framework.

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

   The clemency power is reserved to the Executive Branch. As a judge, I would be bound to respect the separation of powers built into the constitutional framework.

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

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

Yes.

4. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

    a. **Does a judge have a role in ensuring that our justice system is a fair and equitable one?**

    Yes.

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

    Sadly, racial bias still affects our country in many ways. In a nation committed to the equality of all people without regard to race, it should play no role in our justice system, especially our criminal justice system. If confirmed, I will make every effort to ensure that all parties in my courtroom are treated fairly and impartially without regard to race.

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

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

    Yes.

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

    I would encourage qualified candidates from all backgrounds, including qualified minorities and women, to apply for a position in my chambers, and I would give serious consideration to each individual.