

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

May 20, 2014

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

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

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

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

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

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

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

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

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

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

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

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

- d. **In your remarks, you said: “[I]n 1998, the Georgia Supreme Court [in *Powell v. State*, 510 S.E.2d 18 (1998)] struck down Georgia’s sodomy laws and I found it interesting that the lone dissent in that case by Justice Carley speaking with respect to the state regulating the private sexual conduct of consenting adults, that Justice Carley indicated quote that ‘just because, that, because this right is not in the context of, or in the text of the Constitution, its boundaries are necessarily unclear.’”**
- i. **Did you believe in 2004 that the six Georgia Supreme Court Justices in the majority in *Powell* were “activist judges”? Do you believe that today?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: Not to the best of my recollection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- e. **Georgia provides a so-called “judicial bypass,” under which a minor may “petition . . . any juvenile court in the state for a waiver of [the law’s parental notification requirements].” Ga. Code Ann. § 15-11-112.**
- i. **Without divulging any person’s private information, identity, or otherwise impacting any person’s privacy or anonymity, please tell me whether you have heard or decided any case brought under this statute as a superior court judge and provide pertinent details of any such case.**

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

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

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

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

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

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

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

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

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

a. Why did you support this amendment?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- c. **Following the initial adoption of this amendment in the House on February 8, 2001, approximately six weeks elapsed before you cast a roll call vote on the amendment on March 21, 2001.**
- i. **During that six-week intervening period, did you learn about, or did anyone otherwise bring to your attention, the serious violence that could occur as a result of this amendment being enacted?**

Response: No.

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

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

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

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

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

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

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

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

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

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

Response: I was only aware of the issue generally.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: Yes.

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

Response: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Is this how you define “judicial activism”?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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