

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

David W. Dugan, to be United States District Judge for the Southern District of Illinois

1. In 2018, you completed a candidate survey for Illinois Right to Life Action. In your response, you wrote: “While I would, if called upon in my role as a Judge, follow the law as it has been established, I do believe that, for a number of reasons, the case of *Roe v. Wade* is sorely misplaced.”

a. Do you stand by this statement today?

Regarding the reference to *Roe v. Wade*, since I am now an judicial nominee, I believe that it would be inappropriate for me to comment on whether the Supreme Court rightly or wrongly decided a particular case. See Code of Conduct for United States Judges, Canons 2(A) and 3(A)(6). In any event, I will faithfully apply Supreme Court and Seventh Circuit precedent including *Roe v. Wade* and its progeny.

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

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

The Supreme Court has considered whether barriers to access to abortion have a disproportionate impact on “poor, rural, or disadvantaged women”. See *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2302, 195 L. Ed. 2d 665 (2016), *as revised* (June 27, 2016). I will faithfully follow Supreme Court and Seventh Circuit precedent on this issue.

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

Please see my response to 2.a.

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

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

The Supreme Court has held that “the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604–05, 192 L. Ed. 2d 609 (2015). I will faithfully follow Supreme Court and Seventh Circuit precedent, including *Obergefell*.

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

The Supreme Court has held that hurdles to marriage between same-sex couples must be on the same terms and conditions as marriages between persons of the opposite sex. *See Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). I will faithfully follow Supreme Court and Seventh Circuit precedent

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

Please see my response to 3.b.

4. 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?**

I would review the factors set forth in 18 U.S.C. §3553 for the purpose of determining an appropriate sentence. I would review and give consideration to all of the relevant facts of the case, taking into account the sentencing guidelines, presentence report and objections to it, testimony or statements from victims and the defendant, as well as his/her family and friends. I would grant to the defendant the opportunity to make a statement to the court regarding allocution and consider the same. I would hear and give consideration to arguments of counsel.

Having considered the evidence and information provided, I would review each factor in 18 U.S.C. § 3553 to ensure I impose a sentence sufficient, but not greater than necessary, to comply with the purposes of sentencing. These purposes include the need for the sentence to reflect the seriousness of the crime, to promote respect for the law, and to provide just punishment for the offense. I would seek to ensure that the sentence I impose would appropriately serve to

deter criminal conduct, protect the public from future crimes by the defendant, and to promote rehabilitation, including vocational training, medical care and correctional treatment.

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

Please see my response to question 4.a. Additionally, I would look to my experiences during my time representing defendants at sentencing hearings. I would consult and consider any sentencing data generated by the Sentencing Commission.

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

If confirmed I will fully and faithfully follow all Supreme Court and Seventh Circuit precedent regarding the authority to depart from the Sentencing Guidelines. Additionally, I would consult and consider any sentencing data generated by the Sentencing Commission.

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 have not thoroughly studied this issue. In any event, as a judicial nominee, it would be inappropriate for me to comment with any personal beliefs regarding Congress's assessments of mandatory minimum sentences. *See* Code of Conduct for United States Judges, Canons 2(A) and 3(A)(6)

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

Please see my response to question 4.d.i.

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

Please see my response to question 4.d.i.

iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to

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

remedy unjust sentences that result from mandatory minimums.¹ **If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

1. Describing the injustice in your opinions?

If confirmed, I would state any and all bases for my decision regarding sentencing, including those for which there is no discretion. In any event, I would faithfully and dutifully adhere to all Supreme Court and Seventh Circuit precedent and sentencing statutes during the sentencing phase of any case.

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

It is within the province of the Executive Branch to make charging policies and decisions.

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

Clemency power is within the province of the Executive Branch.

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

Yes, where consistent with sentencing statutes and Supreme Court and Seventh Circuit precedent.

5. 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.**

¹ 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>.

Racial disparities exist in our criminal justice system and this is evident from statistics demonstrating a disparity in sentencing.

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

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

Yes.

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

Yes.