

**Senator Josh Hawley**  
**Questions for the Record**

**Stephanie L. Haines**  
**Nominee, U.S. District Court for the Western District of Pennsylvania**

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

The Supreme Court has used the original public meaning of the Constitution’s text to interpret its provisions in some cases. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), both Justice Scalia’s majority opinion and Justice Steven’s dissenting opinion interpreted the Second Amendment based on their understandings of its original meaning. For a lower court 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. If confirmed, I would faithfully apply all controlling Supreme Court precedents.

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

Cases of first impression often occur in connection with recently passed statutes, or when an issue has been addressed by another jurisdiction, but not in the jurisdiction of the presented court. As a judge, in addressing an issue of first impression involving a newly passed statute, I would give effect to the will of Congress, which is expressed through the statutory language. 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). As Justice Kagan has stated, “we’re all textualists now.” Harvard Law School, The Antonin Scalia Lecture Series: A Dialogue with Justice Elena Kagan on the Reading of Statutes (Nov. 25, 2015). If the statute’s language is not plain on its face, I would consider the language in the larger context or structure of the statute in which it is found. In a case of first impression on an issue that has been addressed by other jurisdictions but not my jurisdiction, I would follow the process described above and seek guidance from the other jurisdictions in their decision-making processes, or make analogies to related or similar issues or decisions from my jurisdiction if possible.

**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?**

District courts are bound by the controlling precedents of the Supreme Court and the Circuit Court where the district court resides. It is never appropriate for lower courts to depart from controlling Supreme Court or Circuit Court precedent. If confirmed, I would faithfully follow and apply all controlling Supreme Court and Third Circuit precedent.

- 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?**

A policy maker or an advocate has a particular result that he or she is trying to achieve. In other words, he or she has a stake in the outcome of a matter. To use a sports metaphor, a policy maker or an advocate is like a baseball player who wants his team to win. In contrast, a judge should be like an umpire in a baseball game. A judge should be an impartial arbiter with no stake in the outcome. A judge should faithfully apply the law and controlling precedent and ensure that all parties follow the rules and that the proceedings are fair to all participants.

- 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. A judge should not consider the policy results of a particular decision when deciding a case, unless controlling law directs the judge to do so.

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

The Supreme Court has used substantive due process in a variety of circumstances throughout its history, including striking down economic regulations, incorporating the Bill of Rights against the States, and invalidating laws that restrain certain rights not expressly stated in the Constitution. Some of these precedents have been expressly or effectively overturned, while others have not and remain binding precedent on lower courts. As a district court judge, I would faithfully apply controlling Supreme Court precedents.

**Questions for the Record for Stephanie Lou Haines**  
**From Senator Mazie K. Hirono**

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.

**Nomination of Stephanie Lou Haines**  
**United States District Court for the Western District of Pennsylvania**  
**Questions for the Record**  
**Submitted April 17, 2019**

**QUESTIONS FROM SENATOR BOOKER**

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

The Supreme Court has used the original public meaning of the Constitution's text to interpret its provisions in some cases. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), both Justice Scalia's majority opinion and Justice Steven's dissenting opinion interpreted the Second Amendment based on their understandings of its original meaning. For a lower court 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. If confirmed, I would faithfully apply all controlling Supreme Court precedents.

2. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

Justice Kagan stated that "we're all textualists now." Harvard Law School, The Antonin Scalia Lecture Series: A Dialogue with Justice Elena Kagan on the Reading of Statutes (Nov. 25, 2015). 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). The Supreme Court has at times applied this approach to its interpretation of the text of the Constitution by considering the original public meaning of that text to interpret its meaning. If confirmed, I would faithfully apply Supreme Court precedent regarding the textual interpretation of the Constitution or a statute.

3. 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?

In interpreting any statute, a court's job is to give effect to the will of Congress, which is expressed through statutory language. Thus, a judge cannot consider legislative history when a statute's language is clear. Likewise, legislative history cannot be used to create an ambiguity where none exists in the statute. However, if the language of a statute is clearly ambiguous, the Supreme Court and Third Circuit have indicated that courts

can consult other interpretative tools and sources, including the larger context or structure of the statute in which the statutory language is found and 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 3.a.

- 4. 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.<sup>1</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>2</sup> 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.<sup>3</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>4</sup>

- 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 not studied the issue of implicit bias in our criminal 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.<sup>5</sup> Why do you think that is the case?

I have not studied this report and have no basis to opine as to why this may be occurring.

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<sup>1</sup> 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>.

<sup>2</sup> *Id.*

<sup>3</sup> 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>.

<sup>4</sup> *Id.*

<sup>5</sup> 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](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

- 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.<sup>6</sup> Why do you think that is the case?

I am not aware of this academic study and have no basis to opine as to why this may be occurring.

- 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?

I have not studied implicit racial bias; however, if confirmed, all persons that come into my courtroom will be treated fairly, respectfully, and equally.

5. 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.<sup>7</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>8</sup>

- 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 and have no basis to opine on whether there is or is not a direct link between increases in a state's incarcerated population and decreased crime rates in that state.

- 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 and have no basis to opine on whether there is or is not a direct link between decreases in a state's incarcerated population and decreased crime rates in that state.

6. 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.

7. 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?

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<sup>6</sup> Sonja B. Starr & M. Marit Rehaavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

<sup>7</sup> 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>.

<sup>8</sup> *Id.*

If I am confirmed, all persons that come into my courtroom will be treated fairly, respectfully, and equally.

8. Do you believe that *Brown v. Board of Education*<sup>9</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

*Brown v. the Board of Education* correctly ended a horrific wrong in our nation's history by overturning the false doctrine of separate but equal that was established in *Plessy v. Ferguson*. If I am confirmed, I will faithfully follow and apply *Brown* and all Supreme Court and Third Circuit controlling precedent.

9. Do you believe that *Plessy v. Ferguson*<sup>10</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No. As the Supreme Court pronounced in *Brown v. Board of Education*, *Plessy v. Ferguson* was not correctly decided.

10. 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?

I have received input, not instruction, on this topic. However, my responses to your questions are my own.

11. 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."<sup>11</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

Every litigant is entitled to fair treatment in our courts. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

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<sup>9</sup> 347 U.S. 483 (1954).

<sup>10</sup> 163 U.S. 537 (1896).

<sup>11</sup> 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**

**Stephanie Haines, to the U.S. District Court for the Western District of Pennsylvania**

1. 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 fairly and faithfully apply the law and the United States Sentencing Guidelines, as construed by the Supreme Court and the Third Circuit, in order to impose a sentence that is “sufficient, but not greater than necessary” to achieve the sentencing purposes established by Congress. I would also make an individualized assessment based on the facts and arguments presented. Prior to imposing a sentence, I would thoroughly review any plea agreement; the presentence report; any objections to the presentence report; the recommendation of the probation officer; all victim impact statements; all letters and other materials submitted in support of the defendant; any allocution by the defendant; and, the arguments of counsel. With that information, I would follow the three-step process set forth in *Gall v. United States*, 552 U.S. 38 (2007) and *United States v. Gunter*, 462 F.3d 237 (3d Cir. 2006). In accord with this process, I would first calculate the guidelines range. Next, I would formally rule on all departure motions and state how that departure affects the guidelines calculation. Finally, I would consider the relevant 18 U.S.C. Section 3353(a) factors.

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

I would follow the steps outlined in my answer to Question 1.a. In addition, I would avail myself of available sentencing data for comparative convictions, as needed.

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

A “departure” from the Sentencing Guidelines is distinct from a “variance” based upon factors set forth in 18 U.S.C. Section 3353(a). Authorized departures from the Sentencing Guidelines are detailed in the relevant sections of the Guidelines manual and I would fairly and faithfully apply departures in the appropriate situations where the specific departure is proven and warranted.

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



indeterminate sentencing.<sup>1</sup>

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

I interpret this question as asking for my view, as a judicial nominee, on a matter of policy reserved for Congress, which has established certain mandatory minimum sentencing requirements. I would follow the law established by Congress, regardless of my personal views.

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

Please see my response to Question 1.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 1.d.i.

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

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

I do not believe it is appropriate for me to commit to doing so at this time. However, if confirmed, I would make a determination of what is appropriate depending on the circumstances of the case before me.

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

Please see my response to Question 1.d.iv.1.

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

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

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

Please see my response to Question 1.d.iv.1.

- 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?**

If confirmed as a judge, I would consider all sentencing options permitted by statute and in accord with the Sentencing Guidelines, including alternatives to incarceration in appropriate situations.

- 2. 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.**

Yes. I am aware of statistics from various sources indicating that the rate of incarceration is higher for black men than for white men and that sentences imposed on black men are longer than sentences imposed on white men. If confirmed, all persons that come into my courtroom will be treated fairly, respectfully, and equally.

- 3. 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 intend to make staffing decisions on a case-by-case basis, and in doing so I would look for opportunities to hire and promote qualified minorities and women.