

**Nomination of William Ray II to the
U.S. District Court for the Northern District of Georgia
Questions for the Record
Submitted September 27, 2017**

QUESTIONS FROM SENATOR FEINSTEIN

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

a. When, if ever, is it appropriate for a district court to depart from Supreme Court or the relevant circuit court's precedent?

It is never appropriate for a district court to depart from precedent established by the Supreme Court or the circuit court. In a rare case, a district court may be required to follow recently announced Supreme Court precedent that clearly overrules prior circuit court precedent, where the two conflict.

b. When, if ever, is it appropriate for a district court judge to question Supreme Court or the relevant circuit court's precedent?

Generally, I don't believe that it is appropriate for a district court judge to question precedent from the Supreme Court or the applicable circuit court. In my experience as a Judge on the Court of Appeals of Georgia, I diligently follow precedent set by all higher courts. In cases where I have thought that the Supreme Court of Georgia might accept the case for certiorari review, I have on occasion highlighted arguments which might suggest that the precedent warrants further review or reconsideration by the higher court, while at the same time recognizing that I am bound by the precedent then existing.

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

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

I have never before considered these terms. As a lower court judge, they mean the same to me as any other precedent; that is, the holdings therein are binding and controlling.

b. Is it settled law?

Yes, as the Supreme Court as stated as much.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry.

a. Is the holding in *Obergefell* settled law?

The holding in this case, having been decided by the Supreme Court, is binding and settled for all lower courts.

b. On Friday, June 30, the Texas Supreme Court issued a decision in *Pidgeon v. Turner* which narrowly interpreted *Obergefell* and questioned whether states were required to treat same-sex couples equally to opposite-sex couples outside the context of marriage licenses. The Texas Supreme Court stated that “The Supreme Court held in *Obergefell* that the Constitution requires states to license and recognize same-sex marriages to the same extent that they license and recognize opposite-sex marriages, but it did not hold that states must provide the same publicly funded benefits to all married persons, and... it did not hold that the Texas DOMAs are unconstitutional.” Is this your understanding of *Obergefell*?

Other than casually reading *Obergefell* when it was released due to the historic nature of the decision, I have not studied it in an academic sense or as part of any case that has appeared before me. Should I be confirmed to the district court and should I have a case come before me involving similar issues, I will dutifully review *Obergefell* and apply it and any other binding precedent to the case before me.

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

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

I have no opinion as to Justice Stevens’s dissent. Of course, as a district court judge, should I be confirmed to this position, I would be bound to follow the holdings contained within the majority opinion of the Supreme Court, regardless whether or to what extent I agree or disagree with such holdings.

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

Within the majority opinion in *Heller*, Justice Scalia concluded that the District of Columbia had a variety of tools available that it could use to combat violence, which included other measures regulating handguns. Arguably, this language supports the premise that not all gun regulation is prohibited by the Constitution.

Should any such case come before me presenting this issue, I will study the Supreme Court's holdings in *Heller* and its progeny as I endeavor to rule on the issues in the case.

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

I am not a scholar in the history of the right to bear arms, the regulation of the same, or the Supreme Court's jurisprudence thereon. In any event, if confirmed, I will be bound to follow the Supreme Court's holdings and any applicable precedent of the Eleventh Circuit on this issue.

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

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

I have never had a case before me regarding this issue or had the opportunity to form an opinion thereon. If I am confirmed to this position and should a case come before me presenting these issues, I will be duty bound to follow the holdings contained within *Citizens United* and its progeny.

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

Please see my response to Question 3a above.

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

Please see my response to Question 3a above.

6. Please explain your view of the appropriate temperament of a judge. Do you believe you have the appropriate temperament to be a judge?

I have been a judge for over 15 years, 10 of which were served as a trial judge on the Superior Court of Gwinnett County. I also practiced as a trial attorney for over 12 years. In my experience, judges should be prepared, productive and patient. Having patience in the courtroom is, in my opinion, the most important factor as to whether a judge has appropriate temperament. I believe that litigants, parties, and attorneys who have appeared before me during my career would attest that having a good temperament and demonstrating patience in the courtroom is one of my strengths.

7. District court judges often say that the most difficult aspect of their job is sentencing

defendants. Judges also comment that one of the most complicated legal areas are decisions involving the United States Sentencing Guidelines. How do you plan to familiarize yourself with the Guidelines, and, more importantly, how do you plan to prepare yourself to sentence criminal defendants?

I have a decade of prior experience sentencing defendants from my time as a state court trial judge. I expect this experience will help immensely in getting up to speed on the federal sentencing guidelines. I will consult the guidelines, as well as my colleagues on the bench, in preparing myself for sentencing defendants in the federal system.

8. Before serving as a judge, you served as a Republican member of the Georgia State Senate from 1997 until 2002. You also served as the Chairman of the Gwinnett County Republican Party from 1993 to 1995. In short – before becoming a judge, you were strongly identified with the Republican Party.

- a. **What assurances or evidence can you give the Committee and future litigants who come before you that you will be fair and impartial to everyone who appears before you, if confirmed?**

First and foremost, I have a 15 year record as a judge on both the Superior Court of Gwinnett County and the Court of Appeals of Georgia of just that, being fair and impartial to all. While I was a Republican before I became a judge, my history in the Georgia Legislature was one of bipartisanship. I served there along with my uncle, who was a State Representative and a member of the Democratic Party. We often assisted one another with legislation and worked across the party aisle. I have been appointed to my judgeships from Governors on both sides of the aisle and have been out of politics for 15 years.

- b. **In particular, what assurances or evidence can you give the Committee and future litigants that you will be fair and impartial to those who appear before you, even when they do not share your personal political views?**

Please see my response to Question 8a above.

9. In an interview with the Rome News Tribune in September 2013, you stated “I think one of the things that we’re blessed in Georgia with is, is that, whether we’re talking about judges that had a background in one party or the other, our state is a real conservative state, really, throughout. And so, the judges that we have on the state level have fairly similar philosophies, so, you don’t really get the wide divergence of opinions on the state-wide level that you might on the federal level.”

- a. **What did you mean by this statement?**

The comment that I made was in response to a question about whether it was difficult to work in panels where judges have to get consensus for an opinion. What I intended to convey was that the judges on the Court of Appeals of Georgia have a pretty easy time in reaching consensus in most cases. As a federal district

court judge, I would not normally serve on panels, but would faithfully follow all precedent from the Eleventh Circuit and the Supreme Court. In any event, regardless of background or judicial philosophy, I believe that most judges decide cases the same way, by applying the law to the facts in any given case.

b. How would you describe the general “philosophy” of state court judges in Georgia?

Please see my response to Question 9a above.

c. How would you say the “philosophy” of federal judges diverges from Georgia state court judges?

Please see my response to Question 9a above.

10. As a Republican state senator, you voted against a bill that would have prohibited Georgia state law enforcement from using race or ethnicity as the basis for a traffic stop—in other words, this bill would have prevented racial profiling. You were quoted as saying that if the measure were to pass, “[W]e’re not going to be able to protect ourselves.”

a. What did you mean by that statement?

I supported a Senate Bill in the Judiciary Committee that stated that police could not use race as the sole basis for a traffic stop. While I later opposed the bill when it returned from the House on the last evening of the session in a more complicated form, this does not mean that I supported racial profiling. I am not aware of any benefits of racial profiling.

I concede that the statement made in the debate against the amended bill in the final hours of the General Assembly was not apt.

b. Is it your position today that enabling law enforcement officers to use race or ethnicity as the basis for a traffic stop is necessary to keep communities safe?

Detaining citizens solely due to their race or ethnicity is not consistent with constitutional principles. With respect to my prior statement, please see my response to Question 10a above.

c. Do you believe that racial profiling has costs – and if so, what do you believe those costs to be? For example, can racial profiling create distrust of law enforcement in minority communities? Do you believe that public safety suffers when the public lacks trust in law enforcement?

I certainly understand and appreciate the dynamics within any community when its citizens believe that authorities use pretextual reasons for traffic stops, when the real reason might be race. I agree with the notion that it is important that the community can trust that the police serve all of its citizens with equal dignity and

respect.

11. At your hearing, Senator Klobuchar asked you about your opposition in 2000 to hate crimes legislation proposed in the Georgia State Senate. She asked you about a comment to the press in a March 11, 2000 article, that you opposed the legislation because it treated hate crimes victims differently. You were quoted as saying: “I’m against the bill because we’re providing protection for some citizens, but not for others.” (Benita M. Dodd, *Conversation Starter: Should Georgia Pass a Hate Crimes Law?*, ATLANTA JOURNAL AND CONSTITUTION (March 11, 2000).)

You testified that: “one of the views that I had about the bill, given that it didn’t impose any additional penalties, was that it was the state seeking to say that if you were a victim in one particular class that you are entitled some greater recognition and protection than another.”

However, at the time the article ran, the legislation was described as containing an additional penalty of “five years to the sentence of a felon convicted of a crime motivated by a victim’s ‘actual or perceived race, color, religion, national origin, ancestry, ethnicity, gender, disability or sexual orientation of the victim or any person associated with the victim,’” and would have increased fines “by up to 50 percent” for misdemeanors.

- a. **Is it correct that at the time you made your opposition statement quoted in the March 11 article that the legislation did in fact contain “additional penalties”?**

Not exactly. When the bill was first introduced in the State Senate, it did not include any additional possible incarceration penalties, although it did include additional possible fines. I opposed the bill at the time, because it required the trial judge to make the decision as to whether the crime was motivated by animus or hate, and I felt this was solely a decision to be made by the jury (a view the Supreme Court later took in *Apprendi v New Jersey*). When the House Judiciary Committee later considered the bill, it stated that prison time should be added for sentencing of hate crime, but as I testified before your Committee, this purported enhancement was not any additional time beyond that which was already available to the judge under the sentencing range for the underlying offense. In any event, the bill did not make it back to the State Senate for another vote on the House version until after the article was written.

You also testified that when the bill was amended in a way that the penalties “didn’t really do anything,” that you “felt like at that point in time, that it was simply a political statement that was being made and sometimes if you pass a bill that really doesn’t do anything it sort of takes that bill off the public consciousness and then you don’t do anything else for long period of time.”

- b. **At the time you were considering the bill when it returned to the Senate, did you ever express to your colleagues or the public your concern that the bill risked taking the problem of hate crimes “off the public consciousness” because it lacked additional penalties? If so, please describe. Additionally, did you take any steps to remedy the situation by advocating for additional penalties?**

I don't remember exactly what I said and to whom I spoke about the bill, but I did argue to the Senate that the alleged penalties were worthless since they did not include any authority for the trial judge to sentence the defendant beyond the sentencing range for the underlying offense. Instead, I argued to the Senate that if we weren't going to increase the penalty range that we should at least eliminate parole and require that the sentence as given be served in its entirety. My suggestions were not adopted.

- c. There are several federal hate crimes laws (see, e.g., 18 U.S.C. § 249, 42 U.S.C. § 3631, 18 U.S.C. § 247, 18 U.S.C. § 245). **Do any of these laws raise issues you testified had concerned you with regards to the Georgia state legislation? For example, vagueness, lack of additional penalties, or treatment of certain victims with "some greater recognition and protection than another"?**

As a judge on the Superior Court of Gwinnett County and the Court of Appeals of Georgia, I have never had the opportunity or occasion to study, interpret or apply any of the federal statutes referenced. Should I be confirmed as a district court judge and have a case before be implicating such statutes, I will certainly review the statutes in detail, as well as any Eleventh Circuit and Supreme Court precedent construing them.

12. In 1997, you expressed your "high hopes" for legislation that would ban "partial-birth" abortions. See Denise Johnston, *State Senator Begins Term at Capitol*, ALPHARETTA/ROSWELL NEIGHBOR (January 22, 1997). The legislation contained no exception for protection of a woman's health. The U.S. Supreme Court's decision in *Gonzales v. Carhart*, upholding the federal Partial Birth Abortion Ban Act without a health exception, still recognized that the Act would be unconstitutional if it "subjected women to significant health risks." (*Gonzales v. Carhart*, 550 U.S. 124, 161 (2007) (internal citations omitted).) **In 1997, when you expressed support for the legislation in the Georgia State Senate, had you considered any medical evidence about its impact on women's health? If so, what did the evidence show? If not, why, and did you make yourself aware of any information about the impact on women's health?**

The article referenced herein was written in the very early days of my first term in the State Senate. I feel sure that as of that date we had not yet held any hearings on the proposed bill. Before the bill passed out of committee, there were many individuals who came before the committee to offer testimony. I do not specifically remember the content of the testimony that we received, but there were many proponents and opponents of the proposed bill, some which likely discussed health issues.

13. In 2000, while you were a member of the Georgia State Senate Judiciary Committee, pending legislation sought to criminalize the negligent placement of a handgun within reach of a minor. Press reported that you planned to vote against the legislation if it came up for a vote in committee. (Peter Mantius, *2000 Georgia Legislature: Panel Chairman Refuses Vote on Child-Safety Gun Bill*, THE ATLANTA JOURNAL AND CONSTITUTION

(March 3, 2000.) **Please explain why you would have voted against this legislation.**

I was concerned about “piling on” and adding criminal penalties to a parent who may have lost their child due to a gun accident. I certainly did not condone negligent storage of guns of any sort, but I couldn’t imagine any penalty worse for the parent than to know that their conduct had resulted in harm to their own son or daughter. I felt that was a penalty worse than what any court could assess.

14. In 1997, you expressed that you had “high hopes” for Georgia state legislation that would prohibit the state from “granting preferential treatment to any individual or group” on the basis of “race, color, creed, gender, or national origin” – effectively prohibiting any affirmative action programs.

a. Please explain why you would have supported this legislation.

The comments as reported were made in the days leading into my first session of the Georgia General Assembly. An issue in the campaign had been quotas or set asides in government contracts, which I had opposed as a candidate.

b. Do you agree that there is a compelling interest in the educational benefits that come from a diverse student body?

The Supreme Court has held that there can be a compelling interest in such a case. In any event, if confirmed, I will be bound to follow the Supreme Court’s holdings and any applicable precedent of the Eleventh Circuit on this issue.

15. In 1993, while you served as Chairman, the Gwinnett Republican Party passed a resolution to notify the Gwinnett County Commission that your group “strongly opposes any plan, legislation, or resolution which may explicitly or implicitly condone homosexual behavior,” including “but [] not limited to, the passage of legislation to implement in Gwinnett County any domestic partner benefit plan.” You were quoted as saying “It’s just an expression of our viewpoint.” (Lucy Soto, *Republicans Join Fray Over Family Values*, THE ATLANTA JOURNAL AND CONSTITUTION (August 26, 1993).)

a. At the time, was that indeed your “viewpoint”? Is that still your viewpoint today?

While I was Chairman of the Gwinnett Republican Party when that resolution was passed 25 years ago, I did not introduce that policy and I did not vote for it. The comments that I made were not intended to be my personal views, but were the views of the members of the party who proposed and passed the resolution. As a judge, I do not make policy decisions or express policy preferences.

b. What other plans, legislation, or resolutions “condon[ing] homosexual behavior” were you and the Gwinnett Republican Party concerned about, beyond the implementation of domestic partner benefit plans?

I don't remember all the specifics of the debate on that proposal, but I do recall that some members were concerned about other local governments, both in Georgia and around the country, that had adopted domestic partner benefits around that time.

- c. If confirmed, how can you assure LGBT litigants that you will treat them fairly and impartially?**

In my 15 years on the state bench, I have a record of treating all litigants who come before me fairly, including those in the LGBTQ community. If confirmed as a federal district court judge, I certainly will enforce all Eleventh Circuit and Supreme Court precedent in this area and on any other issue.

16. When you served in the Georgia State Senate, you supported a bill that would require registered voters to show photo identification before voting. You said the bill "would get rid of voter fraud, which is very important in a democracy."

- a. At the time you supported this bill, what data did you review that led you to conclude voter fraud was a problem in Georgia?**

I don't recall whether and to what extent that I was privy to any data regarding voter fraud, however, I was aware of anecdotal stories of such instances. One such account was included in former President Jimmy Carter's book *Turning Point*, where he recounts how his first election to the Georgia State Senate in 1962 was nearly stolen due to voter fraud in rural Georgia.

- b. If you did not review any data on voter fraud in Georgia, on what basis did you conclude that voter fraud was a problem? If voter fraud was not in fact a problem you had empirical evidence for, why did you support legislation that would require voters to show photo identification before voting?**

Please see response to Question 16(a) above.

- c. Do you believe that voter fraud is currently a problem nationwide? If so, on what basis have you reached that conclusion?**

I have no opinion on this claim and am not privy to any data or information thereon. I believe that it would be inappropriate for me to comment on this issue as a judicial nominee, under the canons of the Code of Conduct for United States Judges.

- d. Do you believe that 3-5 million people voted illegally in the 2016 Presidential election? If so, on what basis have you reached that conclusion? If not, do you believe it is appropriate for President Trump to make that claim?**

Please see my response to Question 16c above.

17. You founded and presided over the Gwinnett County Drug Treatment Court. What lessons from your experience with this drug court would you take with you to the federal bench?

Being involved in the Gwinnett County Drug Treatment Court is the most meaningful experience in my judicial and, indeed, in my professional career. It taught me that all people, including those charged with crimes, have redeeming value and can succeed with rehabilitation, hard work, and a little forgiveness. This lesson is one which will accompany me to the federal bench, if I am fortunate to be confirmed.

18. You served as an *ex officio* member of the Georgia Chief Justice's Commission on Indigent Defense in 2000. What did you learn from that experience, and what lessons from that Commission would you take with you to the federal bench?

As an *ex officio* member of this Commission, I was not involved in the meat of the work of the committee. However, it is my firm belief that the criminal justice system only works when defendants have the access to the same resources that the government enjoys, which includes a skilled advocate to present their defense and arguments to the court.

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

I received these questions on the evening of September 27, 2017. I worked on them over the course of the next day, and then provided a draft of my answers to the Office of Legal Policy at the Department of Justice. After consulting with OLP, I made final changes over the weekend and finalized my responses.

Senator Dick Durbin
Written Questions for Allison Eid, Thomas Farr and William Ray
September 27, 2017

For questions with subparts, please answer each subpart separately.

Questions for William Ray

1. Before you became a state court judge you served in the Georgia State Senate from 1997-2002. In January 1997, you gave an interview with the *Alpharetta Roswell Neighbor* where you discussed a voter ID bill that you were involved with. You were quoted as saying “The Voter ID bill proposes a law that would require a picture ID when you are voting.” You went on to say, “this bill would get rid of voter fraud, which is very important in a democracy.”

a. How prevalent do you believe voter fraud is in our democracy?

I don’t recall whether and to what extent that I was privy to any data regarding voter fraud, however, I was aware of anecdotal stories of such instances. One such account was included in former President Jimmy Carter’s book *Turning Point*, where he recounts how his first election to the Georgia State Senate in 1962 was nearly stolen due to voter fraud in rural Georgia.

b. Do you agree with President Trump’s claims that three to five million people voted unlawfully in the 2016 election?

I have no opinion on this claim and am not privy to any data or information thereon. I believe that it would be inappropriate for me to comment on this issue as a judicial nominee, under the canons of the Code of Conduct for United States Judges.

c. Do you believe that voter ID laws can end up making it difficult for poor and elderly Americans to cast their ballot?

Please see response to 3b above.

2. When you were a State Senator in 1997, you gave an interview to the *Forsyth County News* in which you discussed a bill to “end affirmative action programs.” You said you “have high hopes” for the bill. **Please describe this bill.**

I have no specific recollection of this statement, which was reported over 20 years ago, nor do I remember which bill to which it was in reference or even if such a bill was ever introduced.

**Nomination of William Ray, II to
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the Northern District of Georgia
Questions for the Record
Submitted September 27, 2017**

QUESTIONS FROM SENATOR WHITEHOUSE

1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”

- a. Do you agree with Justice Roberts’s metaphor? Why or why not?

I do agree. Judges should not be invested in any particular outcome, simply to apply the law to the facts in any given case.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

Generally speaking, a good judge should not worry about the outcome, but simply apply the law to the facts. If it turns out that such outcome was not as desirable as another outcome, it would be the responsibility of the legislative body to change that law, and not for the judge to do so on the legislature’s behalf.

- c. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a judge to make a subjective determination?

I do not. If the judge must make a subjective determination, then such case is one that should be reserved for the jury’s determination.

2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old.”

- a. What role, if any, should empathy play in a judge’s decision-making process?

I don’t believe that empathy should play a role in determining what the facts are or what law applies to the situation. But empathy can play a role in reminding a judge to be patient and treat each litigant with respect.

- b. What role, if any, should a judge’s personal life experiences play in his or

her decision-making process?

Life experiences should not play a role in determining what the facts are or what law applies to the situation. Yet, I do expect that my time as a legislator, attorney in private practice, and state court judge will be useful prior experience that I will bring with me to the bench, in terms of managing my docket and providing useful background in the law.

- c. Do you believe you can empathize with “a young teenage mom,” or understand what it is like to be “poor or African-American or gay or disabled or old”? If so, what life experiences lead you to that sense of empathy? Will you bring those life experiences to bear in exercising your judicial role?

While I was never a “young teenage mom,” I have interacted with many in Drug Treatment Court. While I am not African-American, I live in a diverse community which is majority-minority. I am neither disabled nor a senior citizen, but I have family members who were or are. These experiences, plus many others in life and which I have been privy to as a judge for 15 years, will go with me to the federal district court, if I am confirmed.

3. While you were a sitting judge, you expressed the opinion that Republican ascendance “is real important for our country.” Why did you think it was appropriate for a judge like yourself to express your political beliefs?

Respectfully, the above is misquoted in that it refers to country rather than county. The article quotes me as saying the change was “real important for our *county*,” meaning Gwinnett County, because as the article further quotes, “it [would] raise the importance level of our delegation.” My point was that having a Republican majority meant that Gwinnett County, which was majority Republican, may now have greater political influence. Perhaps the better course would have been not to have given this interview, but I did not view it as a partisan statement.

4. While a state senator, you had a voting record of consistently opposing abortion. As a federal judge, would you uphold Supreme Court precedent that protects the constitutional right to abortion, such as *Roe* and its progeny?

I will enforce *Roe* and its progeny, just as I will enforce any precedent of the Eleventh Circuit and the Supreme Court to which I am bound.

5. As a state senator, you publicly opposed affirmative action and supported bills you hoped would “end affirmative action programs.” As a federal judge, would you uphold Supreme Court precedent that protects these programs, such as *Fisher v. University of Texas*?

I will enforce all precedent of the Eleventh Circuit and the Supreme Court, including *Fisher*.

6. As a state senator, you voted against a bill that would have prohibited Georgia state law enforcement from engaging in racial profiling.

a. Do you condone the practice of racial profiling? Does racial profiling in policing offer any benefits?

I supported a Senate Bill in the Judiciary Committee that stated that police could not use race as the sole basis for a traffic stop. While I later opposed the bill when it returned from the House on the last evening of the session in a more complicated form, this does not mean that I supported racial profiling. I am not aware of any benefits of racial profiling.

b. How does that practice withstand the protections of the Equal Protection Clause?

Detaining citizens solely due to their race or ethnicity is not consistent with constitutional principles.

c. As a federal judge, would you protect the rights of all defendants in the criminal justice system regardless of race? How can you assure this committee of that?

I certainly will protect everyone's rights, regardless of race. This is reflected in my record as a trial court judge for over 10 years in Gwinnett County, Georgia, which is the most racially and ethnically diverse county in the State of Georgia. In addition, when I was in the State Senate, I was one of only a handful of Republican members to vote to change the Georgia State flag to shrink the Confederate Battle emblem. I cast this vote at great political peril, but did so because I thought it was the right thing to do.

7. As a state senator, you introduced legislation that would require individuals to serve their entire prison sentence rather than be considered for parole.

a. Do you still support so-called "truth-in-sentencing"?

For the last 15 years, I have not been in a policy-making role, as I have served as a judge in the courts of Georgia. Thus, I currently have no position on this proposal.

b. How do you respond to the reports that such reforms actually lead to increased bad behavior and psychological problems among the incarcerated because they are not incentivized to engage in good behavior and have no hope of getting released sooner?

I am not aware and have not reviewed these reports, as I have not advocated for this issue since I left the Georgia Senate in 2002.

c. Would your views on this issue affect the sentences you impose as a federal judge?

No, I would fairly and impartially apply the federal sentencing guidelines to the best of my ability, and leave it to the legislature to make policy determinations in enacting legislation.

- d. When, if ever, would you be inclined to grant a motion for a downward departure from the Federal Sentencing Guidelines' recommended sentence?

As I understand, the guidelines are just the starting point and that federal judges retain discretion to depart downward or upward therefrom based on the facts of the case. I would certainly be open to argument thereof. Georgia does not have sentencing guidelines, but I always started with a premise that any defendant would receive the average sentence in the state for a similar offense. I would sentence below or above that average based on a consideration of the facts of the case and mitigating and aggravating factors.

8. Under your leadership, the Gwinnett County Republican Party passed a resolution that stated, "[T]he party strongly opposes any plan, legislation, or resolution which may explicitly or implicitly condone homosexual behavior." Based on your previous statements, how can you provide assurance to the LGBTQ community that you will protect their constitutional rights through strong enforcement of the Supreme Court's decisions in *Romer*, *Lawrence*, *Windsor*, and *Obergefell*?

While I was Chairman of the Gwinnett Republican Party when that resolution was passed 25 years ago, I did not introduce that policy and I did not vote for it. In my 15 years on the state bench, I have a record of treating all litigants who come before me fairly, including those in the LGBTQ community. If confirmed as a federal district court judge, I certainly will enforce all Eleventh Circuit and Supreme Court precedent in this area and on any other issue.

9. Under what circumstances would you recuse yourself from a case where you've taken an uncategory position on the merits?

I cannot think of a case in which I have ever recused myself in 15 years as a judge because of the subject matter of the underlying issue involved. However, if any case were to ever come before me where I thought I could not be fair for any reason, I would not hesitate to recuse. I have routinely recused when parties or attorneys have come before me with whom I have had a conflict of interest.

Questions for the Record
Senator Mazie K. Hirono
September 27, 2017

William M. Ray II, Nominee to the United States District Court for the Northern District of Georgia

1. In 2013, while serving on the Georgia Appeals Court, you said, “I think one of the things that we’re blessed in Georgia with is, is that, whether we’re talking about judges that had a background in one party or the other, our state is a real conservative state, really, throughout. And so, the judges that we have on the state level have fairly similar philosophies, so, you don’t really get the wide divergence of opinions on the state-wide level that you might on the federal level.” If you are confirmed to the federal court, you will have to follow “a wide divergence of opinions” in your circuit and from the Supreme Court. If you felt having all conservative judges was a “blessing”, will this be a “curse”?

The comment that I made was in response to a question about whether it was difficult to work in panels where judges have to get consensus for an opinion. What I intended to convey was that the judges on the Court of Appeals of Georgia have a pretty easy time in reaching consensus in most cases. As a federal district court judge, I would not normally serve on panels, but would faithfully follow all precedent from the Eleventh Circuit and the Supreme Court. In any event, regardless of background or judicial philosophy, I believe that most judges decide cases the same way, by applying the law to the facts in any given case.

2. In 1992, in *Planned Parenthood v. Casey*, the Supreme Court re-affirmed the core holding of *Roe v. Wade*, that the right to an abortion is constitutionally protected. The Court held that these decisions are protected because they are among “the most intimate and personal choices a person makes in a lifetime.”
 - a. Do you believe the Constitution protects the right to make “intimate and personal” decisions?

I recognize that the Supreme Court has said as much, and should I be confirmed as a district court judge, I am bound by that determination and precedent.

- b. Do you believe there is a right to privacy protected by the Constitution?

I recognize that the Supreme Court has said as much, and should I be confirmed as a district court judge, I am bound by that determination and precedent.

- c. In 1997, while you were in the Georgia State Senate, it appears you supported a “partial-birth abortion” ban bill that did not provide an exception to protect women’s health, prohibited a wide range of abortion medical procedures used in the second trimester, and penalized doctors who violate the law with jail time and/or monetary fines. How would a litigant coming before you in a case about reproductive health be able to expect a fair

hearing in your court, as it is clear that you are anti-abortion?

When I left the Georgia General Assembly and became a judge in 2002, I ended my days as a policymaker. I would have no problem applying the law as written by Congress and following precedent of the Eleventh Circuit or the Supreme Court of the United States. Proof of that fact is my 15 year career as judge in the state courts of Georgia, where I have faithfully followed state law and precedent.

3. President Trump has claimed that millions of people voted illegally in the 2016 election, and has set up an “election integrity commission” to prove that claim correct and encourage voter suppression laws.

- a. Despite the lack of evidence, do you believe that millions of people voted illegally in the 2016 election?

I have no opinion on this claim and am not privy to any data or information thereon. I believe that it would be inappropriate for me to comment on this issue as a judicial nominee, under the canons of the Code of Conduct for United States Judges.

- b. As a State Senator you were supportive of requiring voter ID. Do you believe that voter fraud is a more widespread problem than systematic voter suppression?

Please see my response to 3a above.

4. In 2000, you voted against a bill that would have prohibited Georgia State law enforcement from using race or ethnicity as the basis for a traffic stop. You said, “We’re going to have to lock our doors and keep our kids off the streets because we’re not going to be able to protect ourselves,” if the measure were to pass.

- a. Do you believe that there is no way for police to protect our communities without engaging in racial profiling?

I supported a Senate Bill in the Judiciary Committee that stated that police could not use race as the sole basis for a traffic stop. While I later opposed the bill when it returned from the House on the last evening of the session in a more complicated form, this does not mean that I supported racial profiling. I am not aware of any benefits of racial profiling.

I concede that the statement made in the debate against the amended bill in the final hours of the General Assembly was not apt.

- b. Do you think that racial profiling is constitutional?

Detaining citizens solely due to their race or ethnicity is not consistent with constitutional principles.

5. In 1999, you co-sponsored “a resolution urging the citizens and civic and community leaders of Georgia to maintain and encourage positive character qualities by designating Georgia as a State of Character.” The resolution emphasized “honorable character qualities based upon the moral standards held by our founding fathers and with which they established our nation and legal system,” as well as “building upon our heritage of making Georgia a place where families are strong.” It also stated that “lack of commitment and irresponsibility have resulted in an increasing number of family problems causing personal, social, and financial consequences to individual family members and to this state as a whole,” and noted that “encouraging employees by recognizing positive character qualities has resulted in an increase in workplace morale, employee safety, and corporate profits.” Do you think President Trump has demonstrated a commitment to the ideals behind that resolution?

I do not believe that it would be appropriate for me as a judicial nominee to comment on the conduct or actions of President Trump or any other political leader.

6. In August 1993, under your leadership, the Gwinnett County Republican Party passed a resolution that stated, “The Gwinnett County Republican Party shall notify all members of the Gwinnett County Commission that the party strongly opposes any plan, legislation, or resolution which may explicitly or implicitly condone homosexual behavior. Such plans which are opposed include, but are not limited to, the passage of legislation to implement in Gwinnett County any domestic partner benefit plan.” You were quoted saying of the resolution’s passage, “Our main point in passing the resolution is not to grant members of the homosexual community greater rights than exist in the general citizenry, and that’s what we think the domestic partnership rights do,” adding, “It’s just an expression of our viewpoint.”
 - a. Is it your view that treating members of the LGBTQ community equally grants them “greater rights”? If so, how?

Please see my response to Question 8 of Senator Whitehouse’s questions for the record.

- b. In *Obergefell v. Hodges*, the Supreme Court held that same-sex couples have the fundamental right to marry as guaranteed by the Due Process Clause and the Equal Protection Clause of the 14th Amendment. Will you have any difficulty following that precedent?

No, I will apply this or any other precedent of the Eleventh Circuit and the Supreme Court of the United States.