

**Nomination of Matthew Thomas Schelp to the United States District Court for the
Eastern District of Missouri
Questions for the Record
Submitted December 11, 2019**

QUESTIONS FROM SENATOR FEINSTEIN

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

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

It is never appropriate for a lower court to depart from Supreme Court precedent.

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

A district judge is required to fully and faithfully apply all binding Supreme Court precedent. There may however be circumstances in which a district judge may address prior cases, gaps in the law, or circuit conflicts regarding proper application of a United States Supreme Court precedent to raise issues for consideration.

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

A district court decision is not binding. *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011). Federal Rules of Civil Procedure 59(e) and 60 provide standards for a district court to set aside its prior rulings in a specific case. A district could should reconsider or set aside its own decisions when they conflict with applicable precedent from the Supreme Court or of the Court of Appeals of its circuit.

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

The decision to overturn Supreme Court precedent lies squarely with the Supreme Court. As a lower court judge and judicial nominee, I do not believe it appropriate for me to opine on when the Supreme Court should overturn its own precedent.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as “super-stare decisis.” A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that “superprecedent” is “precedent that defines the law and its requirements so

effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

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

Roe v. Wade is a binding Supreme Court precedent that has been reaffirmed multiple times. If confirmed, I would faithfully apply it and all applicable Eighth Circuit and Supreme Court precedent.

b. Is it settled law?

Yes.

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

Yes.

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

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

As a district court nominee, I believe it is inappropriate for me to comment on my views regarding Justice Stevens’s dissent. If confirmed, I will be bound to follow *Heller* and any and all applicable Eighth Circuit or Supreme Court precedent interpreting the same.

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

In *Heller*, the Supreme Court noted that “the right secured by the Second Amendment is not unlimited.” 554 U.S. 570, 626 (2008). The Court went on to state that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 626-27.

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

Please refer to my response to Question 4(a) above.

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?

The Supreme Court has recognized that the "First Amendment protection extends to corporations." *Citizens United v. FEC*, 558 U.S. 310, 342 (2010). If confirmed, I would faithfully apply *Citizens United* and all applicable Eighth Circuit and Supreme Court precedent.

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

As a judicial nominee, it would be inappropriate to comment on legal matters that may come before the courts. If confirmed, I would faithfully apply all Eighth Circuit and Supreme Court precedent regarding the First Amendment.

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

The Supreme Court has held that the Religious Freedom Restoration Act applies to for-profit closely held corporations. *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 719 (2014). The Supreme Court did not reach the First Amendment claims in that case. *Id.* at 736. As a judicial nominee, it would be inappropriate to comment on legal matters that may come before the courts. If confirmed, I would faithfully apply *Hobby Lobby* and all applicable Eighth Circuit and Supreme Court precedent.

6. Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?

The Constitution guarantees both the equal protection of the laws and the right to the free exercise of religion. If confirmed, I would faithfully apply the Constitution and all applicable Eighth Circuit and Supreme Court precedent. As a judicial nominee, it would be inappropriate to comment on legal matters that may come before the courts.

7. Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk's sincerely held religious beliefs?

Please refer to my response to Question 6 above.

8. Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist's sincerely held religious beliefs?

Please refer to my response to Question 6 above.

9. You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 2015. The Federalist Society's "About Us" webpage explains the purpose of the organization as follows: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law." It says that the Federalist Society seeks to "reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community."

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

I was not aware of the cited webpage, and I cannot speak to its meaning as I was not the author.

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

Please see my answer to Question 8(a).

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

Please see my answer to Question 8(a).

- d. Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.**

Yes. I have friends and colleagues who are members of the Federalist Society, and I have had discussions with them about my interest in the position and my nomination.

- e. Why did you decide to join the Federalist Society in 2015, more than 18 years after you began practicing law?**

I became aware of the St. Louis Chapter of the Federalist Society in 2015 from a professional colleague. I then attended a meeting in 2015 at his invitation. I joined after that meeting.

10. On your Senate Questionnaire, you indicated that you have been a member of the Republican National Lawyers Association (“RNLA”) since 2014. The RNLA’s “About Us” webpage states that “[e]ach member . . . must ascribe to the accomplishment” of the organizations missions, which include: “Advancing Republican Ideals. The RNLA further builds the Republican Party goals and ideals through a nationwide network of supportive lawyers who understand and directly support Republican policy, agendas and candidates.”

- a. Please detail the activities that your membership in this organization has entailed.**

Since 2014, I have worked as a poll monitor for elections through the RNLA. In addition, I attended meetings.

- b. In what ways do you believe that you have “directly support[ed] Republican policy, agendas and candidates”?**

Please see my answer to Question 9(a).

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

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

I do not recall being asked by anyone in this administration about administrative law.

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

I do not recall being asked by anyone in the Federalist Society or the Heritage Foundation about administrative law.

c. What are your “views on administrative law”?

In my legal practice, I have not focused on matters related to administrative law. If confirmed, I would faithfully apply Eighth Circuit and Supreme Court precedent regarding administrative law.

12. Do you believe that human activity is contributing to or causing climate change?

I have not studied the issue. As a judicial nominee, it would be inappropriate to comment on legal matters that may come before the courts.

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

The Supreme Court has opined that legislative history may be considered when the text of a statute is ambiguous. *Cf. Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 567-71 (2005).

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

No.

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

I read the questions, reviewed my Senate Judiciary Questionnaire, and considered relevant legal sources before submitting drafts responses to the Office of Legal Policy at the Department of Justice for comment. After receiving feedback, I made edits that I deemed appropriate and finalized my responses.

**Questions for Matthew T. Schelp
From Senator Mazie K. Hirono**

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

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

No.

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

No.

2. Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases.

- a. Do you agree that training on implicit bias is important for judges to have?**

Yes. Based on my experience taking training on implicit bias, I believe there is value in judges taking such training.

- b. Have you ever taken such training?**

Yes, I took training on implicit bias in my current position as a partner at Husch Blackwell LLP.

- c. If confirmed, do you commit to taking training on implicit bias?**

I am not familiar with the training opportunities afforded district court judges. However, I do commit to exploring any training offered that will enhance my ability to serve.

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QUESTIONS FROM SENATOR

BOOKER

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

Yes, the Supreme Court has recognized the importance of the Constitution's text, structure, and original understanding in interpreting a constitutional provision. If confirmed, I would faithfully follow the Constitution and applicable Eighth Circuit and Supreme Court precedent as to issues of constitutional interpretation.

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

Yes, in statutory interpretation, the Supreme Court has recognized if the text of a statute is plain, that is generally the end of the inquiry. If the statute is ambiguous, courts turn to the tools of statutory construction to determine the statute's meaning. I will faithfully apply Eighth Circuit and Supreme Court precedent as to issues of statutory interpretation.

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 a statute, the Supreme Court has held that if the text of a statute is unambiguous, that ends the inquiry. *See, e.g., BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). The Supreme Court has used legislative history as a tool to determine the meaning of ambiguous statutes. *See, e.g., Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 737 (1985). If confirmed, I would faithfully follow all applicable Eighth Circuit and Supreme Court precedent on issues of statutory interpretation.

- 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. Do you believe that judicial restraint is an important value for a district judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

Yes. I understand judicial restraint to mean that the role of the judge is to apply the law to the facts of the specific case before the court and to do so in a fair and impartial manner without regard to the judge's policy or outcome preferences.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.¹ Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it is not appropriate to comment on or grade Supreme Court decisions.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.² Was that decision guided by the principle of judicial restraint?

Please see my response to Question 4(a).

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.³ Was that decision guided by the principle of judicial restraint?

Please see my response to Question 4(a).

5. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.⁴ In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.⁵

- a. Do you believe that in-person voter fraud is a widespread problem in American elections?

I have not studied the issue so I have no basis to opine as to whether in-person voter fraud is a widespread problem in American elections. I would faithfully apply any applicable Eighth Circuit or Supreme Court precedent on this issue.

- b. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

Voting is a fundamental political right that must be protected. However, as a judicial nominee it would be inappropriate to comment on policy or legal matters that may come before the courts.

¹ 554 U.S. 570 (2008).

² 558 U.S. 310 (2010).

³ 570 U.S. 529 (2013).

⁴ *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

⁵ *Id.*

- c. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

Please see my response to Question 5(b).

6. According to a Brookings Institution study, African Americans 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.⁶ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.⁷ 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.⁸ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁹

- a. Do you believe there is implicit racial bias in our criminal justice system?

Any bias, implicit or otherwise, has no place in the criminal justice system.

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

I am aware of statistics that show racial disparities in our country's prison population.

- c. 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.

Yes, I took training on implicit bias in my current position as a partner at Husch Blackwell LLP.

- d. 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.¹⁰ Why do you think that is the case?

I have not studied the reasons for such disparities.

⁶ 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>. ⁷ *Id.*

⁸ 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>.

⁹ *Id.*

¹⁰ 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.

- e. 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.¹¹ Why do you think that is the case?

I am not familiar with the study cited for such a disparity.

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

Judges have the responsibility of ensuring that bias has no place in their courtrooms and that every defendant is treated fairly, respectfully, and with dignity.

7. 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.¹² In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.¹³

- 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.

As a judicial nominee, it would be inappropriate to comment on policy matters.

- 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.

Please see my response to Question 7(a).

8. 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.

9. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

Yes.

10. Do you believe that *Brown v. Board of Education*¹⁴ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Yes.

¹¹ Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320,

1323 (2014).

¹² 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.

¹³ *Id.*

¹⁴ 347 U.S. 483 (1954).

¹⁵ 163 U.S. 537 (1896).

11. Do you believe that *Plessy v. Ferguson*¹⁵ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No.

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

No.

13. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had “an absolute conflict” in presiding over civil fraud lawsuits against Trump University because he was “of Mexican heritage.”¹⁶ Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

As a judicial nominee, it would be inappropriate for me to comment on political matters.

14. 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.”¹⁷ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

The Supreme Court has recognized that the Due Process Clause applies to all “persons” within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). If confirmed, I would faithfully apply this and all applicable Eighth Circuit and Supreme Court precedent.

¹⁵ 163 U.S. 537 (1896).

¹⁶ Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict,'* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

¹⁷ 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 December 11, 2019
For the Nomination of**

Matthew T. Schelp, to the U.S. District Court for the Eastern District of Missouri

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?**

In sentencing any defendant, I would consider the applicable law, and the motions and arguments of the parties. I would consider the advisory Sentencing Guidelines. As the Supreme Court has stated: “As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 49 (2007); *see also* *Peugh v. United States*, 133 S. Ct. 2072, 2083 (2013)(same). I shall also consider the statutory sentencing factors set forth in 18 U.S.C. § 3553(a), and seek always to “impose a sentence sufficient, but not greater than necessary” to comply with that statutory directive. 18 U.S.C. § 3553(a).

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

Generally, I would follow the summary steps outlined in my response to 1(a) above. I would also avail myself of any pertinent guidance available from the U.S. Sentencing Commission to ensure a fair, proportional and individualized sentence.

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

The law provides authority for a sentencing judge to depart from the advisory sentencing guidelines and, separately, to grant a variance from the final calculated guidelines. The guidelines offer a non-exhaustive list of potential grounds for departure but, generally, a departure from the sentencing guidelines is appropriate in an "atypical case" where particular facts or circumstances place the case outside the "heartland" of cases of the type that informed the guidelines. *See* U.S.S.G. § 5K2.0(a)(2). In addition to requests for departure, the judge must also carefully consider requests for variance based on any reasons offered by the defendant.

- 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?**

Congress has established mandatory minimum sentences for certain federal crimes. If confirmed, I will faithfully follow all applicable statutes and precedent. As a judicial nominee, it would not be appropriate for me to express my personal opinion about mandatory minimum sentences because they are policy choices committed to the legislative branch. *See* Code of Conduct for United States Judges, Canons 2.A and 5.

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.² **If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

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

If confirmed and faced with these circumstances, I will carefully consider the law and facts of each case, as well as my ethical obligations, and render judgment accordingly.

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

Please see refer to my response to Question 1(d)(iv).

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

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

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

Please see refer to my response to Question 1(d)(iv).

- 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.

- 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.**

I am aware that there are statistical reports showing racial disparities in our criminal justice system, such as incarceration rates.

- 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?**

Yes, diversity will be a priority as it always has been for me.