Nomination of Justin Reed Walker to the United States District Court for the Western District of Kentucky
Questions for the Record
Submitted August 7, 2019

QUESTIONS FROM SENATOR FEINSTEIN

1. At your hearing, I asked you a number of questions about your trial practice. Please answer the following questions to provide clarity with respect to your experience.

   a. Apart from the pro bono matter in which you served as co-counsel with a Criminal Justice Act-appointed attorney (*United States v. Todd*), have you worked on any other criminal cases? Please answer only with a "Yes" or "No."

   Yes.

   b. Have you ever presented an argument before a federal jury? Please answer only with a "Yes" or "No."

   No.

   c. How many bench trials have you handled? Please provide a specific number.

   I have not handled bench trials because the primary focus of my career has been as a teacher of trial process, criminal procedure, evidence, and constitutional law, all with a focus on litigation and judicial decisionmaking. Even though it's unusual for a full-time law professor, I've maintained a private law practice. In my time at a large national law firm, then as a solo practitioner, and now as a partner at another large national law firm, I have litigated complex legal questions of civil procedure, criminal procedure, criminal law, constitutional law, labor law, and administrative law. My experience also includes clerkships for two Supreme Court justices – then-Judge Brett Kavanaugh and Justice Anthony Kennedy.

   d. How many depositions have you taken in federal cases? Please provide a specific number.

   My deposition experience has been in state court, so I have not taken depositions in federal cases.

   e. How many motions for summary judgment have you submitted in federal court? Please provide a specific number.

   Although I have litigated complex legal questions of civil procedure, criminal procedure, criminal law, constitutional law, labor law, and administrative law in my time at a large national law firm, then as a solo practitioner, and now as a

partner at another large national law firm, and although I teach the standard for summary judgment, I have not submitted motions for summary judgment in federal court.

f. How many motions to dismiss have you submitted in federal court? Please provide a specific number.

Although I have litigated complex legal questions of civil procedure, criminal procedure, criminal law, constitutional law, labor law, and administrative law in my time at a large national law firm, then as a solo practitioner, and now as a partner at another large national law firm, and although I teach *Twombly*, *Iqbal*, and the standard for motions to dismiss, I have not submitted motions to dismiss in federal court.

2. Based on your Senate Judiciary Questionnaire, you advocated for the nomination and confirmation of Justice Brett M. Kavanaugh in numerous interviews.

a. How many radio, print, and television interviews regarding the nomination of then-Judge Kavanaugh did you participate in between June 27, 2018 and October 6, 2018? Please provide a specific number.

119.

b. Why did you participate in these interviews?

In my role as an academic and as a citizen interested in the political process, I wanted to share my perspective on Justice Kavanaugh with audiences less familiar with him than I was.

c. You stated on your Senate Judiciary Questionnaire that you "expressed an interest in judicial service to Senator Mitch McConnell on June 22, 2018," just days before you started participating in interviews advocating for then-Judge Kavanaugh's nomination to the Supreme Court. Did anyone in Senator McConnell's office, Senator Paul's office, or within the Trump administration advise you that participating in these interviews regarding the confirmation of Justice Kavanaugh would benefit your own nomination to be a federal judge?

No.

3. Based on your public Financial Disclosure Report, the Federalist Society paid you $8,500 in honoraria in 2018. Please list each of the appearances or events for which you were compensated. For each, please include the date, a summary of the subject matter, and the specific honorarium amount.

December 4, 2018: My presentation in Raleigh, North Carolina, described some pending

Supreme Court cases and summarized my article, *The Schechter-to-Chevron Spectrum*, a copy of which I supplied in response to Question 12.a. of the Senate Judiciary Questionnaire. I received a $1,000 honorarium.

December 3, 2018: My presentation in Winston-Salem, North Carolina, described some pending Supreme Court cases and summarized my article, *The Schechter-to-Chevron Spectrum*, a copy of which I supplied in response to Question 12.a. of the Senate Judiciary Questionnaire. I received a $1,000 honorarium.

September 18, 2018: My presentation at the Indiana University School of Law discussed Justice Kavanaugh's jurisprudence and nomination. I received a $1,000 honorarium.

September 11, 2018: My presentation at Columbia Law School discussed Justice Kavanaugh's jurisprudence and nomination. I received a $1,000 honorarium.

August 28, 2018: My presentation at Columbia Law School discussed Justice Kavanaugh's jurisprudence and nomination. I received a $1,000 honorarium.

August 16, 2018: My presentation in Louisville, Kentucky, discussed Justice Kavanaugh's jurisprudence and nomination. I received a $500 honorarium.

August 13, 2018: My presentation in Indianapolis, Indiana, discussed Justice Kavanaugh's jurisprudence and nomination. I received a $1,000 honorarium.

July 30, 2018: My evening presentation in Anchorage, Alaska, discussed Justice Kavanaugh's jurisprudence and nomination. I received a $1,000 honorarium.

July 30, 2018: My afternoon presentation in Anchorage, Alaska, discussed Justice Kavanaugh's jurisprudence and nomination. I received a $1,000 honorarium.

4. Question 26 of the Senate Judiciary Questionnaire asks that you "describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated)." Based on your Senate Judiciary Questionnaire you (1) "expressed an interest in judicial service to Senator Mitch McConnell on June 22, 2018"; (2) discussed the topic with Senator Rand Paul in a meeting where Senator Mike Lee and a member of Senator Paul's staff were also present" on October 11, 2018; and then (3) interviewed with attorneys from the White House Counsel's Office and the Department of Justice's Office of Legal Policy" on March 7, 2019.

   a. Please describe your experience during the *entire* judicial selection process, including communications you received between June 22, 2018 and March 7, 2019 regarding your nomination to be a federal judge.

   My answer to Question 26 of the Senate Judiciary Questionnaire accurately describes my experience in the entire judicial selection process.

b. Who contacted you about being nominated to be a federal judge? Did they say why you were being nominated?

I was contacted by an Associate Counsel in the White House Counsel's Office approximately three weeks after my March 7 interview, on March 26, 2019. That attorney did not say why I was being nominated.

5. In a 2018 article, you praised then-Judge Kavanaugh for providing a "roadmap" to strike down the ACA's individual mandate. You also called the Supreme Court's opinion upholding the ACA — *NFIB v. Sebelius* — an "indefensible decision." (Brett Kavanaugh Said Obamacare was Unprecedented and Unlawful (2018))

a. Please explain the "roadmap" to strike down the ACA's individual mandate.

I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from going beyond what was said in the 2018 article.

b. Do you still believe that would be an effective strategy?

Please see my response to Question 5(a).

c. What was "indefensible" in the Court's opinion in NFIB v. Sebelius?

Please see my response to Question 5(a).

6. In a 2018 article, you argued that calls for an independent FBI in the wake of President Trump's firing of FBI Director James Comey were misguided. You wrote that "the FBI Director should not think of himself as the Nation's Protector," but instead "as an agent of the President." (*FBI Independence as a Threat to Civil Liberties* (2018))

a. Do you believe the FBI is a political organization? Do you believe it is appropriate for the FBI to conduct politically motivated investigations?

I understand that the role of an academic is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from going beyond what was said in the 2018 article, which made clear that I believe no one is above the law and the FBI should not be used in unlawful ways.

b. Do you believe acting "as an agent of the President" would have the appearance of being political?

Please see my response to Question 6(a).

c. Do you believe it is appropriate for the FBI to conduct investigations at the urging of the President?

Please see my response to Question 6(a).

7. You have argued that federal agencies have too much power to issue rules and regulations. You have also expressed support for overturning several Supreme Court cases that are vital to agencies' ability to implement federal laws. For instance, you have argued broadly worded congressional statutes giving agencies authority to adopt specific rules or regulations erode accountability. (*The Kavanaugh Court and the Schechter-to-Chevron Spectrum* (2019))

a. Do you believe it's Congress's role to pass laws that set specific particle standards for what constitute clean air or safe levels of ozone?

I understand that the role of an academic is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from saying more than what was said in the draft article.

b. Do you expect Congress to pass laws with such specificity that there can't be updated rules based on advancements in science and technology?

Please see my response to Question 7(a).

c. If there are advancements in medicine, science, or technology can those not be considered by agencies?

Please see my response to Question 7(a).

8. In a *Fox News* interview on July 8, 2018, you said:

"You know, I think because Judge- I'm sorry, because President Trump's- he's been a big fan of generals and warriors, and I think Judge Kavanaugh fits that bill, you know, if you imagine Judge Kavanaugh storming a beach, his military uniform's torn and tattered from fighting for conservative legal principles and then I also think President Trump likes someone with an all-American family. Judge Kavanaugh, when he and his wife look at each other, it reminds me of how Ronald Reagan and Nancy Reagan used to just adoringly look at each other. He's got beautiful daughters. I think America is going to fall in love with him and his family."

a. What are the "conservative legal principles" that Judge Kavanaugh has fought for?

I was referring to fidelity to text, respect for the separation of powers, and the humility to know that a judge's role is to apply the law rather than to make the

law.

b. How do you define an "all-American family"?

I believe Justice Kavanaugh is a caring husband and father, and when I used that phrase, I was referring to his family's love for each other.

c. Your analogy suggests that now-Justice Kavanaugh has been a military leader. Such individuals lead their troops into battle against an adversary. Who is the adversary against whom Kavanaugh "storm[ed] a beach"?

I was saying that Justice Kavanaugh's principles are in conflict with those principles that do not reflect a respect for text, separation of powers, or the limited role of the judge in our constitutional structure.

9. In a *Fox News* interview on September 3, 2018, you endorsed a theory that gun restrictions based on public safety are "precluded by the Second Amendment" because of "the decision by the framers to make that balancing choice themselves and to take some of that question out of the Democratic process."

a. Did the Framers ever discuss the relationship between the Second Amendment and the size of a magazine or gun clip?

No.

b. At the time of the Second Amendment's ratification — and in the decades that followed — numerous states passed laws regulating, among other things, the amount of gunpowder an individual could possess. The state could also require the militia to muster and could demand inspection of firearms possessed by the militia members as part of their service obligations.

i. **What is the difference between regulating the size of a magazine or gun clip and regulating the amount of gunpowder one can possess?**

Although I stand by what I said in that interview, I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from saying more than what was said in the interview last summer.

ii. **What is the difference between mandatory mustering of a militia and inspection of a firearm and a mandatory background check process?**

Please see my response to Question 9(b)(i).

10. At your hearing, Senator Lee said he's known you for "four or five years."

a. How do you know Senator Lee?

Senator Lee and I are good friends.

b. Before first expressing interest in this judicial vacancy to Senator McConnell in June 2018, did you seek Senator Lee's advice or otherwise communicate with Senator Lee about pursuing this judgeship? If so, what advice did he provide and/or what discussions took place between the two of you?

No, I did not seek Senator Lee's advice or otherwise communicate with him about pursuing this judgeship before first expressing interest in this judicial vacancy to Senator McConnell in June 2018.

11. 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 lower courts 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?

It is never appropriate for lower courts to depart from Supreme Court precedent. Although it may occasionally be proper for a district judge to observe that the Supreme Court's jurisprudence is confusing or problematic in its application, a district judge must decide a case based on fidelity to Supreme Court precedent.

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

As a general rule, district court decisions are not binding in future cases, although district court judges should apply the principles of res judicata and collateral estoppel and are bound by decisions in the case in which the decisions are issued.

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

The principles of stare decisis are important to order, predictability, and the rule of law. The Supreme Court alone must decide whether to overturn a precedent. District courts must faithfully apply any changes to precedents made by the Supreme Court.

12. 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 is binding precedent of the Supreme Court, and lower courts should apply it fully and faithfully, as with all precedents of the Supreme Court.

b. Is it settled law?

Yes. For lower court judges, all Supreme Court precedent, including *Roe v. Wade*, is settled law.

13. 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. For lower court judges, all Supreme Court precedent, including *Roe v. Wade*, is settled law.

14. 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?

These issues are implicated by pending or impending litigation. The Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view.

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

The majority's opinion in *Heller* stated, "Like most rights, the right secured by the Second Amendment is not unlimited."

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

These issues are implicated by pending or impending litigation. The Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view.

15. 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?

These issues are implicated by pending or impending litigation. The Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view.

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

These issues are implicated by pending or impending litigation. The Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view.

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

These issues are implicated by pending or impending litigation. The Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view.

16. You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 2006. Additionally, you stated that you've served on the Executive Committee for International and National Security Law Practice Group since 2017 and on the Executive Committee for the Louisville Chapter since 2016. 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?

The language in that quotation was drafted by the Federalist Society, not by me, and because I did not draft it, I don't know what meaning was intended.

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

Please see my answer to Question 16(a).

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

Please see my answer to Question 16(a).

d. Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court?

No.

e. What does your role on the Executive Committee for International and National Security Law Practice Group entail?

The committee organizes educational programing related to international and national security law. I have joined conference calls that discussed future programming. I have also organized and moderated a teleforum about the scope of the Establishment Clause overseas, which is noted in Question 12(d) of my Senate Judiciary Questionnaire.

f. What does your role on the Executive Committee for the Louisville Chapter entail?

The committee organizes educational programming in Kentucky related to the law. I have helped organize educational events.

17. 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?

At my interview on March 7, 2019, I discussed my knowledge of various Supreme Court precedents, and they may have included precedents related to administrative law. I don't remember anyone asking about my thoughts on 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 have written and spoken publicly as an academic on administrative law topics, and audience members sometimes ask questions after I speak. Aside from that, I don't remember anyone asking about my thoughts on administrative law.

c. What are your "views on administrative law"?

I first studied administrative law at Harvard in a class taught by then-Dean Elena Kagan. Since then, I have written and spoken about this area of the law. My view with regard to the intersection of administrative law and district courts is that district court judges must follow all statutes and Supreme Court precedents in this area fully and faithfully.

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

These issues are implicated by pending or impending litigation. The Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view.

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

The Supreme Court has given lower courts guidance on this question. The Court has said that as a general matter, legislative history is not necessary when a statute is unambiguous, while it can be considered when a statute is ambiguous. Lower court judges should apply all Supreme Court precedents with regard to legislative history and should consider all arguments raised by litigants, including arguments related to legislative history.

20. 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.

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

I drafted these answers, shared them with the Department of Justice's Office of Legal Policy, and then received input. Each answer is mine alone.

Written Questions for Justin Walker
Submitted by Senator Patrick Leahy
August 6, 2019

1. In a law review article published last year, you discussed inherent judicial power, which you argued prevents Congress from placing limitations on a judge's office management activities, such as hiring law clerks. I think we agree that an independent judiciary is critically important to the system of checks and balances that our Framers created. But I want to make clear that judicial independence is not a green light for judges to manage their chambers in a biased or politically motivated manner.

    (a) If confirmed to be a judge for the Western District of Kentucky, will you require your law clerks to attend any clerkship academy or similar training program not run by a law school, such as clerk training programs that have been run by the Heritage Foundation?

    I do not plan to impose any such requirement.

2. Over the weekend, there was a mass shooting in El Paso and Dayton that resulted in the deaths of over 30 people. We know the gunman at Dayton used a legally purchased semiautomatic rifle. Last July, you predicted that Kavanaugh's confirmation would result in an end to bans on semi-automatic rifles. Later last year, you pointed to then-Judge Kavanaugh's dissent in a D.C. Circuit case that argued against such a ban from a historical perspective.

    (a) I have always found it perplexing that a pure originalist could assert that the Framers, 230 years ago, intended to extend Second Amendment protections to firearms used on 21st century battlefields. How do you justify overturning legislatures' decisions to ban certain assault weapons?

    District of Columbia v. Heller, 554 U.S. 570 (2008), is binding Supreme Court precedent. If confirmed, I would apply *Heller*, as I would apply all precedents of the Supreme Court and the Sixth Circuit. It would not be appropriate for me, as a judicial nominee, to go beyond what I stated in the commentary you are referring to.

3. **Chief Justice Roberts wrote in *King v. Burwell* that**

    "oftentimes the 'meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.' So when deciding whether the language is plain, we must read the words 'in their context and with a view to their place in the overall statutory scheme.' Our duty, after all, is 'to construe statutes, not isolated provisions?'"

Do you agree with the Chief Justice? Will you adhere to that rule of statutory interpretation – that is, to examine the entire statute rather than immediately reaching for a dictionary?

District judges should follow binding precedent fully and faithfully, including the case of *King v. Burwell*. The Supreme Court has frequently stated a statute's text and structure should inform statutory interpretation, and if confirmed, I will be faithful to that guidance.

4. President Trump has issued several attacks on the independent judiciary. Justice Gorsuch called them "disheartening" and "demoralizing."

    (a) Does that kind of rhetoric from a President – that a judge who rules against him is a "so-called judge" – erode respect for the rule of law?

    Judicial independence is important to our constitutional structure and to the rule of law. It is protected by the constitutional guarantees of life tenure and salary protection. As an academic, I have repeatedly written about its importance. It is important for judges to go where the law leads, even when it is controversial or subject to criticism.

    (b) While anyone can criticize the merits of a court's decision, **do you believe that it is ever appropriate to criticize the legitimacy of a judge or court?**

    Please see my response to Question 4(a).

5. President Trump praised one of his advisers after that adviser stated during a television interview that "the powers of the president to protect our country are very substantial *and will not be questioned*." (Emphasis added.)

    (a) Is there any constitutional provision or Supreme Court precedent precluding judicial review of national security decisions?

    Courts review decisions by the President in times of war and in times of peace.

6. Many are concerned that the White House's denouncement of "judicial supremacy" was an attempt to signal that the President can ignore judicial orders. And after the President's first attempted Muslim ban, there were reports of Federal officials refusing to comply with court orders.

    (a) If this President or any other executive branch official refuses to comply with a court order, how should the courts respond?

As a judicial nominee, I do not think it would be appropriate for me under the Code of Conduct of U.S. Judges, to comment on this abstract and hypothetical scenario about a President's non-compliance with a court order.

7. In *Hamdan v. Rumsfeld*, the Supreme Court recognized that the President "may not disregard limitations the Congress has, in the proper exercise of its own war powers, placed on his powers."

   (a) Do you agree that the Constitution provides Congress with its own war powers and Congress may exercise these powers to restrict the President – even in a time of war?

   As Justice O'Connor wrote in *Hamdi v. Rumsfeld*, "a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens." No one is above the law, including the President.

   (b) In a time of war, do you believe that the President has a "Commander-in-Chief" override to authorize violations of laws passed by Congress or to immunize violators from prosecution? Is there any circumstance in which the President could ignore a statute passed by Congress and authorize torture or warrantless surveillance?

   Please see my responses to Questions 6(a) and 7(a).

8. How should courts balance the President's expertise in national security matters with the judicial branch's constitutional duty to prevent abuse of power?

Courts should apply all binding precedents, constitutional provisions, and applicable statutory provisions. As Justice O'Connor wrote in *Hamdi v. Rumsfeld*, "a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens."

9. In a 2011 interview, Justice Scalia argued that the Equal Protection Clause does not extend to women.

   (a) Do you agree with that view? Does the Constitution permit discrimination against women?

   The Supreme Court held in *United States v. Virginia* (1996) that the Fourteenth Amendment's Equal Protection Clause prohibits distinctions on the basis of sex unjustified by an "exceedingly persuasive justification." A district court judge should follow *United States v. Virginia* fully and faithfully.

10. Do you agree with Justice Scalia's characterization of the Voting Rights Act as a "perpetuation of racial entitlement?"

The Voting Rights Act was one of the most important statutes in our history, and a district court judge should follow Supreme Court precedents regarding the Voting Rights Act fully and faithfully.

11. What does the Constitution say about what a President must do if he or she wishes to receive a foreign emolument?

The Constitution says that "no Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office or Title, of any kind whatever, from any King, Prince or foreign State." Beyond that, these issues are implicated by pending or impending litigation. The Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view.

12. In *Shelby County v. Holder*, a narrow majority of the Supreme Court struck down a key provision of the Voting Rights Act. Soon after, several states rushed to exploit that decision by enacting laws making it harder for minorities to vote. The need for this law was revealed through 20 hearings, over 90 witnesses, and more than 15,000 pages of testimony in the House and Senate Judiciary Committees. We found that barriers to voting persist in our country. And yet, a divided Supreme Court disregarded Congress's findings in reaching its decision. As Justice Ginsburg's dissent in *Shelby County* noted, the record supporting the 2006 reauthorization was "extraordinary" and the Court erred "egregiously by overriding Congress' decision."

    (a) When is it appropriate for the Supreme Court to substitute its own factual findings for those made by Congress or the lower courts?

    Appellate courts generally rely on the factual records of district court proceedings. Beyond that, issues related to *Shelby County* are implicated by pending or impending litigation. The Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view.

13. How would you describe Congress's authority to enact laws to counteract racial discrimination under the Thirteenth, Fourteenth, and Fifteenth Amendments, which some scholars have described as our Nation's "Second Founding"?

The Thirteen, Fourteenth, and Fifteenth Amendments grant Congress the authority to enact "appropriate legislation" to protect the guarantees of those important amendments.

14. Justice Kennedy spoke for the Supreme Court in *Lawrence v. Texas* when he wrote: "liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct," and that "in our tradition, the State is not omnipresent in the home."

(a) Do you believe the Constitution protects that personal autonomy as a fundamental right?

I would fully and faithfully apply *Lawrence v. Texas*, which is a binding precedent of the Supreme Court.

15. In the confirmation hearing for Justice Gorsuch, there was extensive discussion of the extent to which judges and Justices are bound to follow previous court decisions by the doctrine of stare decisis.

(a) In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court? Does the commitment vary depending on whether the question is one of statutory or constitutional interpretation?

A district judge in the Sixth Circuit should apply the "precedents on precedent" of the Sixth Circuit and U.S. Supreme Court. Those precedents provide that the principles of stare decisis are fundamental to the rule of law. A district court judge should never deviate from binding precedent regarding statutory or constitutional interpretation.

16. Generally, federal judges have great discretion when possible conflicts of interest are raised to make their own decisions whether or not to sit on a case, so it is important that judicial nominees have a well-thought out view of when recusal is appropriate. Former Chief Justice Rehnquist made clear on many occasions that he understood that the standard for recusal was not subjective, but rather objective. It was whether there might be any appearance of impropriety.

(a) How do you interpret the recusal standard for federal judges, and in what types of cases do you plan to recuse yourself? I'm interested in specific examples, not just a statement that you'll follow applicable law.

A judge should follow 28 U.S.C. § 455, the Code of Conduct for U.S. Judges, and the practices of the judge's court with regard to recusal. For example, a judge should recuse from a case when the judge participated in the case as an attorney. Likewise, a judge should recuse from all cases involving the judge's former firm for an appropriate period of time. Recusal when proper is vital to judicial independence and public respect for the judiciary, and if confirmed, I would carefully consider, in every case, the question of whether recusal is warranted.

17. It is important for me to try to determine for any judicial nominee whether he or she has a sufficient understanding the role of the courts and their responsibility to protect the constitutional rights of individuals, especially the less powerful and especially where the

political system has not. The Supreme Court defined the special role for the courts in stepping in where the political process fails to police itself in the famous footnote 4 in *United States v. Carolene Products*. In that footnote, the Supreme Court held that "legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation."

(a) Can you discuss the importance of the courts' responsibility under the *Carolene Products* footnote to intervene to ensure that all citizens have fair and effective representation and the consequences that would result if it failed to do so?

The words on the front of the U.S. Supreme Court say, "Equal Justice Under Law." That promise is what every litigant has a right to expect in every courtroom. It is important for courts to ensure that all citizens receive the legal protections guaranteed to them by the Constitution.

18. Both Congress and the courts must act as a check on abuses of power. Congressional oversight serves as a check on the Executive, in cases like Iran-Contra or warrantless spying on American citizens and politically motivated hiring and firing at the Justice Department during the Bush administration. It can also serve as a self-check on abuses of Congressional power. When Congress looks into ethical violations or corruption, including inquiring into the Trump administration's conflicts of interest and the events discussed in the Mueller report we make sure that we exercise our own power properly.

(a) Do you agree that Congressional oversight is an important means for creating accountability in all branches of government?

Yes. I have written about the importance of congressional oversight.

19. Do you believe there are any discernible limits on a president's pardon power? For example, President Trump claims he has an "absolute right" to pardon himself. Do you agree?

These issues are implicated by current political controversies. The Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view.

20. What is your understanding of the scope of congressional power under Article I of the Constitution, in particular the Commerce Clause, and under Section 5 of the Fourteenth Amendment?

The Supreme Court has provided important guidance regarding the scope of congressional power in *Gonzalez v. Raich*, *City of Boerne v. Flores*, and *United States v. Lopez*. If confirmed, I would follow those precedents, and all binding precedents, fully and faithfully.

21. In *Trump v. Hawaii*, the Supreme Court allowed President Trump's Muslim ban to go forward on the grounds that Proclamation No. 9645 was facially neutral and asserted that the ban was in the national interest. The Court chose to accept the findings of the Proclamation without question, despite significant evidence that the President's reason for the ban was animus towards Muslims. Chief Justice Roberts' opinion stated that "the Executive's evaluation of the underlying facts is entitled to appropriate weight" on issues of foreign affairs and national security.

    (a) What do you believe is the "appropriate weight" that executive factual findings are entitled to on immigration issues? Does that weight shift when additional constitutional issues are presented, as in the Establishment Clause claims of *Trump v. Hawaii*? Is there any point at which evidence of unlawful pretext overrides a facially neutral justification of immigration policy?

    Trump v. Hawaii held that "even assuming that some form of review is appropriate, plaintiffs' attacks on the sufficiency of the President's findings cannot be sustained" because the President's Proclamation No. 9645 "thoroughly describes the process, agency evaluations, and recommendations underlying the President's chosen restrictions." It said that "plaintiffs' request for a searching inquiry into the persuasiveness of the President's justifications is inconsistent with the broad statutory text and the deference traditionally accorded the President in this sphere." A lower court judge should apply all Supreme Court precedents, including *Trump v. Hawaii*. The canons of judicial conduct preclude me, in my role as a judicial nominee, from going beyond that statement.

22. **How would you describe the meaning and extent of the "undue burden" standard established by *Planned Parenthood v. Casey* for women seeking to have an abortion? I am interested in specific examples of what you believe would and would not be an undue burden on the ability to choose.**

    Casey's "undue burden" standard prohibits "unnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion." *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2309 (2016). The regulations at issue in *Whole Woman's Health* are illustrative of regulations the Supreme Court has held impose an "undue burden." If confirmed, I would apply *Roe*, *Casey*, and *Whole Woman's Health* fully and faithfully. The canons of judicial conduct preclude me, in my role as a judicial nominee, from going beyond that statement.

23. Federal courts have used the doctrine of qualified immunity in increasingly broad ways, shielding police officers in particular whenever possible. In order to even get into court, a victim of police violence or other official abuse must show that an officer knowingly violated a clearly established constitutional right as specifically applied to the facts and

that no reasonable officer would have acted that way. Qualified immunity has been used to protect a social worker who strip searched a four-year-old, a police officer who went to the wrong house, without even a search warrant for the correct house, and killed the homeowner, and many similar cases.

(a) Do you think that the qualified immunity doctrine should be reined in? Has the "qualified" aspect of this doctrine ceased to have any practical meaning? Should there be rights without remedies?

According to the Supreme Court, "the doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). The doctrine "balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Id.* If confirmed, I would fully and faithfully apply all precedents of the Supreme Court, including *Pearson v. Callahan*. The canons of judicial conduct prohibit me, in my role as a judicial nominee, from going beyond that statement.

24. The Supreme Court, in *Carpenter v. U.S.* (2018), ruled that the Fourth Amendment generally requires the government to get a warrant to obtain geolocation information through cell-site location information. The Court, in a 5-4 opinion written by Roberts, held that the third-party doctrine should not be applied to cellphone geolocation technology. The Court noted "seismic shifts in digital technology", such as the "exhaustive chronicle of location information casually collected by wireless carriers today."

(a) In light of *Carpenter* do you believe that there comes a point at which collection of data about a person becomes so pervasive that a warrant would be required? Even if collection of one bit of the same data would not?

Carpenter, *Riley v. California*, and *United States v. Jones* make clear that new technology can pose a risk of "Government encroachment of the sort the Framers, after consulting the lessons of history, drafted the Fourth Amendment to prevent." *Carpenter v. United States*, 138 S. Ct. 2206, 2223 (2018). If confirmed, I would fully and faithfully apply all Supreme Court precedents, including *Carpenter*, *Riley*, and *Jones*. The canons of judicial conduct preclude me, in my role as a judicial nominee, from going beyond that statement.

25. Earlier this year, President Trump declared a national emergency in order to redirect funding toward the proposed border wall after Congress appropriated less money than requested for that purpose. This raised serious separation-of-powers concerns because the Executive Branch bypassed the congressional approval generally needed for appropriations. As a member of the Appropriations Committee, I take seriously Congress's constitutional duty to decide how the government spends money.

    (a) With the understanding that you cannot comment on pending cases, are there situations when you believe a president can legitimately allocate funds for a purpose previously rejected by Congress?

    These issues are implicated by pending or impending litigation. The Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view.

26. During Justice Kavanaugh's confirmation hearing, he used partisan language to align himself with Senate Republicans. For instance, he accused Senate Democrats of exacting "revenge on behalf of the Clintons" and warned that "what goes around comes around." The judiciary often considers questions that have a profound impact on different political groups. The Framers sought to address the potential danger of politically-minded judges making these decisions by including constitutional protections such as judicial appointments and life terms for Article III judges.

    (a) Do you agree that the Constitution contemplates an independent judiciary? Can you discuss the importance of judges being free from political influence?

    The Constitution contemplates an independence judiciary. As an academic, I have written about the importance of judicial independence. It is vitally important that politics have no role in the courtroom, and if I'm confirmed, it will have no place in mine.

Senator Dick Durbin
Written Questions for Walker
August 7, 2019

For questions with subparts, please answer each subpart separately.

Questions for Mr. Walker

1. The American Bar Association's Standing Committee on the Federal Judiciary (ABA) rated you "Not Qualified" for the position of federal district court judge. The ABA found that you do not have requisite trial or litigation experience, specifically pointing to your "absence of any significant trial experience" and noting that from their conversations with you it was "challenging to determine how much of [your] ten years since graduation from law school has been spent in the practice of law." The ABA concluded that "Mr. Walker does not meet the minimum professional competence standard necessary to perform the responsibilities required by the high office of a federal district court judge."

   a. Was the ABA correct in stating that "Mr. Walker has never tried a case as lead or co-counsel, whether civil or criminal"?

   A CJA-appointed attorney and I recently represented a criminal defendant in the federal trial referred to in Question 1(b). Although I did extensive legal work in the courtroom during the trial related to jury selection, evidentiary questions, and the impeachment of witnesses, the Court's rules allowed only the CJA-appointed attorney to speak in court.

   b. Was the ABA correct in stating that your "recent co-counsel experience in a criminal *pro bono* case tried in the Western District of Kentucky did not include performance of any duties in the courtroom due to the Court's rules prohibiting the appointment of two attorneys to try the case"?

   Please see my response to Question 1(a).

   c. Do you agree with the ABA that "[t]he judicial system, the public, the trial bar, and the nominee are not well served by appointing to the bench a lawyer who lacks adequate experience"?

   I agree that experience matters, and I believe my experience is why hundreds of local lawyers and former law students wrote many letters to the Judiciary Committee saying that my experience as a litigator, law professor, and community leader demonstrate my ability to perform the duties of a district judge, including analyzing complex legal questions, thinking on my feet, and listening and learning with humility and an evenhanded temperament.

   d. Do you think your ability to serve as a district court judge would be enhanced if you first spent more time gaining litigation and trial experience? Or is it your judgment that your current level of experience is adequate?

I agree with the opinion of hundreds of members of my local legal community – the litigators and law professors and former students who know me best – that my experience has demonstrated the skills required of a district court judge.

2. In July 2018, after President Trump fired FBI Director James Comey over the Russia investigation, you wrote an article in the *George Washington University Law Review* entitled "FBI Independence as a Threat to Civil Liberties."

   In this article, you wrote that "the FBI Director should not think of himself as the nation's protector; instead, he must think of himself as an agent of the President." You went on to argue that "when the FBI is independent of the President, it is independent of the people."

   Is it your view that the FBI should not investigate acts of suspected criminal conduct by a President or by a President's Administration?

   No.

3. On July 2, 2018, you wrote a column in *The Federalist* publication in which you urged President Trump to nominate Brett Kavanaugh for the Supreme Court. You used this column to argue that a Justice Kavanaugh would not be sympathetic to arguments about the constitutionality of the Affordable Care Act (ACA).

   In this piece, you described the Supreme Court's decision in *NFIB v. Sebelius*, which upheld the constitutionality of the ACA, as an "indefensible decision."

   Given your clearly-stated views about the *NFIB* decision and the constitutionality of the Affordable Care Act, would you commit that, if you are confirmed, you would recuse yourself from any case involving constitutional challenges to the Affordable Care Act's provisions?

   A judge should follow 28 U.S.C. § 455, the Code of Conduct for U.S. Judges, and the practices of the judge's court with regard to recusal. For example, a judge should recuse from a case when the judge participated in the case as an attorney. Likewise, a judge should recuse from all cases involving the judge's former firm for an appropriate period of time. Recusal when proper is vital to judicial independence and public respect for the judiciary, and if confirmed, I would carefully consider, in every case, the question whether recusal is warranted.

4. **Why were you not admitted to practice in the Western District of Kentucky until 2019?**

   Although I have been a member of the Kentucky Bar since 2009, a member of the D.C. Bar since 2010, a member of the D.C. Circuit since 2011, and a member of the Sixth Circuit since 2016, my litigation work before 2019 did not require admission to the Western District of Kentucky.

Nomination of Justin Reed Walker
to the United States District Court for the Western District of Kentucky
Questions for the Record
Submitted September 8, 2019

QUESTIONS FROM SENATOR WHITEHOUSE

1. In your questionnaire, you indicated that you initially expressed an interest in judicial service to Senator McConnell on June 22, 2018. In the time between June 2018 and Justice Kavanaugh's nomination to the Supreme Court in October 2018, you participated in nearly 100 radio and television interviews to advocate for Kavanaugh's confirmation.
    a. When did you first learn you were being considered for this nomination to the United States District Court for the Western District of Kentucky?

        Although I was not told that a nomination was likely until around March 2019, I first learned that Senator McConnell was considering the possibility of recommending me for this nomination in June 2018, and I first learned that Senator Paul was considering it in October 2018.

    b. When did you first learn that you would be nominated to this seat?

        March 26, 2019.

    c. You participated in many of these interviews on behalf of then-Judge Kavanaugh after you had expressed interest in being nominated to the district court. Do you believe this was appropriate conduct for someone seeking to serve on the federal bench?

        Although it is important for academics and other citizens interested in the political process to engage in the political process, I understand that the role of a judge or judicial nominee is different. Politics should have no role in the courtroom, and if I am fortunate enough to be confirmed, it will have no place in mine.

2. On July 8 2018, you were interviewed on Fox News to advocate for Kavanaugh's nomination and said the following: "The one thing that's impressed me [about Judge Kavanaugh] is that he is a fighter for conservative legal principles who will not go wobbly. The man does not have a wobbly bone in his body. And you don't have to take my word for it. You can just look at his 12-year record, his 300 opinions on conservative issues like Second Amendment, executive power, and EPA regulations."
    - What exactly did you mean when you said that Kavanaugh "would not go wobbly?"

        I meant that I expected Justice Kavanaugh would remain faithful to text, the separation of powers, and the limited role of a judge in our constitutional structure. I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from going beyond what was said in the July 2018 interview.

    - Do you think Justice Kavanaugh's "12-year record, his 300 opinions on conservative issues like Second Amendment, executive power, and EPA regulations" reflect an

impartial approach to judicial decision making? Why did you cite it as evidence that he would "not go wobbly"?

Please see my response to the first part of Question 2, above.

3. In your July 8, 2018 Fox News interview, you stated: "I think if [Judge Kavanaugh is] nominated, he'll go down as a Trump justice." In March, Chief Justice John Roberts stated "[w]e do not have Obama judges or Trump judges, Bush judges or Clinton judges…What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them."
    a. What did you mean when you said Justice Kavanaugh would "go down as a Trump justice"?

    I meant that, if confirmed Justice Kavanaugh's tenure on the Supreme Court would be a part of President Trump's legacy, not President Bush's legacy, even though Justice Kavanaugh once worked in the Bush White House and was nominated to the D.C. Circuit by President Bush.

    b. In light of your remarks, is it fair to say you disagree with Chief Justice Roberts's sentiment that "[w]e do not have Obama judges or Trump judges, Bush judges or Clinton judges." If you do agree with Chief Justice Roberts, please explain how his statement can be reconciled with your own.

    Please see my response to the first part of Question 3, above.

4. In an interview with Fox Business on October 1, 2018, you referred to Senate Democrats' desire for an FBI investigation into Dr. Christine Blasey Ford's allegations as "a farce" and directly attacked the character of both Senators Blumenthal and Hirono.
    a. Why do you believe an FBI investigation into the allegations against Justice Kavanaugh was a "farce"?

    As I stated at the time, I believe all serious accusations of sexual misconduct should be treated seriously and with respect. I was intending to refer to a confirmation process that I stated had been unfair to Justice Kavanaugh and Dr. Ford.

    I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from saying more about politicians or political controversies than what was said last summer.

    b. You made these statements after you had expressed interest in being nominated to the district court. Do you believe these statements demonstrate the proper temperament of someone seeking to serve on the federal bench?

    Although I believe it is appropriate and even important for citizens to engage in the political process, I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. Politics

should have no role in the courtroom, and if I am fortunate enough to be confirmed, it will have no place in mine.

5. On July 10, 2018, The Baltimore Post-Examiner ran an article ("Kavanaugh nomination draws swift praise, condemnation") for which you gave an interview in support of then-Judge Kavanaugh's nomination. In that interview, you were quoted as saying: "This is a conservative revolution as big as the Reagan Revolution. Issues like affirmative action, school prayer, gun rights, and abortion will see drastic changes. I predict an end to affirmative action, an end to successful litigation about religious displays and prayers, an end to bans on semi-automatic rifles, and an end to almost all judicial [decisions allowing abortion]. This change will give Donald Trump the most conservative judicial legacy of any Republican in history, by far."
    a. Given these comments, why should the American people have any faith that you will apply the law impartially, rather than in pursuit of particular policy outcomes?

       I was asked to make predictions in my role as an academic and a citizen engaged in the political process, and I made predictions similar to those that many ideologically diverse legal experts were also making. Although I believe it is appropriate and even important for citizens to engage in the political process, I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. Politics should have no role in the courtroom, and if I am fortunate enough to be confirmed, politics will have no place in mine.

    b. You made these statements after you had expressed interest in being nominated to the district court. Do you believe these comments demonstrate the proper temperament of someone seeking to serve on the federal bench?

       Please see my response to Question 5(a).

    c. Do you see your own nomination to the federal bench as part of "a conservative revolution"?

       I agree with the hundreds of local lawyers and former law students whose letters to the Judiciary Committee reflect their belief that I was nominated because my experience as a litigator, law professor, and community leader demonstrates my ability to analyze complex legal questions, to think on my feet, and to listen and learn with humility and an evenhanded temperament.

6. Your questionnaire indicates that you have been a member of the Federalist Society for Law and Public Policy Studies since 2006.
    a. Your questionnaire notes that you received $8,500 in honoraria from the Federalist Society in 2018. If confirmed, will you continue to accept money from the organization?

       Judges are not allowed to accept honoraria for speeches, and if confirmed, I will follow all ethical rules relating to compensation.

    b. The Committee on Codes of Conduct's Advisory Opinion No. 40 ("Service on Governing Board of Nonprofit Organization that Tends to Become Involved in Court Proceedings") states that "the changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization

to determine if it is proper to continue the relationship." If confirmed, do you plan to remain an active participant in the Federalist Society?

If confirmed, I plan to follow the guidance of Opinion No. 40 and "regularly . . . reexamine the activities of each organization [extending an invitation to me] to determine if it is proper to continue the relationship."

c. If confirmed, do you plan to donate money to the Federalist Society?

I do not.

d. Have you had contacts with representatives of the Federalist Society in preparation for your confirmation hearing? Please specify.

I have not.

7. A Washington Post report from May 21, 2019 ("A conservative activist's behind-the-scenes campaign to remake the nation's courts") documented that Federalist Society Executive Vice President Leonard Leo raised $250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven't already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.
   a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

   I reviewed the article in order to answer the questions in Question 7.

   b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

   The Canons of the Code of Conduct for United States Judges prohibit me from commenting on political matters related to judicial nominations.

   c. Mr. Leo was recorded as saying: "We're going to have to understand that judicial confirmations these days are more like political campaigns." Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

   Please see my response to Question 7(b).

   d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination? If you do, please describe the circumstances of that advocacy.

   I am not aware of any such advocacy.

   e. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we "stand at the threshold of an exciting moment" marked by a

"newfound embrace of limited constitutional government in our country [that hasn't happened] since before the New Deal." Do you share the beliefs espoused by Mr. Leo in that recording?

Please see my response to Question 7(b).

8. 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' metaphor? Why or why not?

    The metaphor has limits, but I agree with the sentiment behind it that judges must go where the law leads, without passion or prejudice for any political or policy preference.

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

    There are occasions when the law requires a judge to consider the practical consequences of a ruling. For example, under the standard for considering a preliminary injunction, a judge considers, among other things, whether the plaintiff "is likely to suffer irreparable harm in the absence of preliminary relief, [whether] the balance of equities tips in his favor, and [whether] an injunction is in the public interest." *Winter v. Nat. Res. Def. Council Inc.*, 555 U.S. 7, 20 (2008).

9. 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 trial judge to make a subjective determination?

    A judge must decide whether there is a genuine dispute as to any material fact. This decision should not be guided by personal feelings. Rather, a judge should make an objective determination based on the facts and the law. "[T]he 'genuine issue' summary judgment standard is 'very close' to the 'reasonable jury' directed verdict standard," and "the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986).

10. During Justice Sotomayor's confirmation proceedings, President Obama expressed his view that a judge benefits from having 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?

    A judge must follow the law, without passion or prejudice for any party or any personal viewpoints. However, judges should display empathy while impartially applying the law. The law has profound consequences for litigants and the public, including the victims of crime, and a judge should be mindful of those consequences.

    b. What role, if any, should a judge's personal life experience play in his or her decision-making process?

A judge's life experiences can teach a judge lessons about the importance of being a good listener, of being a lifelong learner, and of humility – all of which are important qualities in a judge.

11. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

    No.

12. When, if ever, is it appropriate for a district judge to publish an opinion that includes dicta challenging the correctness of a binding precedent?

    It is never appropriate for a district judge to depart from a binding precedent. Although it may occasionally be proper for a district judge to observe that the jurisprudence surrounding a particular issue is confusing or problematic in its application, a district judge must decide a case based on fidelity to the binding precedent.

13. When, if ever, is it appropriate for a district judge to publish an opinion that includes a proclamation of the judge's personal policy preferences or political beliefs?

    It isn't proper.

14. The Seventh Amendment ensures the right to a jury "in suits at common law."
    a. What role does the jury play in our constitutional system?

       The jury plays an important role in our constitutional system, ensuring that certain questions are decided by litigants' peers.

    b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

       The Supreme Court has issued important decisions regarding arbitration clauses, and if confirmed, I would follow those precedents fully and faithfully, taking into consideration all appropriate constitutional and statutory provisions.

    c. Should an individual's Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

       Please see my response to Question 14(b).

15. What deference do congressional fact-findings merit when they support legislation expanding or limiting individual rights?

    The Supreme Court has issued important decisions regarding congressional fact-finding, and if confirmed, I would follow those precedents fully and faithfully, taking into consideration all appropriate constitutional and statutory provisions. *See, e.g.*, *Tennessee v. Lane*, 541 U.S. 509 (2004); *Nev. Dep't of Hum. Res. v. Hibbs*, 538 U.S. 721 (2003); *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62 (2000); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Katzenbach v. Morgan*, 384 U.S> 641 (1966).

16. The Federal Judiciary's Committee on the Codes of Conduct recently issued "Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates." I request that before you complete these questions you review that Advisory Opinion.
    a. Have you read Advisory Opinion #116?

        Yes

    b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?
        i. Determining whether the seminar or conference specifically targets judges or judicial employees.

            Judicial independence is central to the rule of law. As an academic, I have written about its importance. The Code of Conduct for United States Judges and Advisory Opinion #116 protect the independence of the judiciary, and I will look to them for guidance in the event I am invited to attend a seminar or conference of any type. As Advisory Opinion #116 says, "it is essential for judges to assess each invitation to participate or attend a seminar on a case-by-case basis." As part of that case-by-case analysis, if confirmed, I will consider each of the factors that Advisory Opinion #116 lists as appropriate for consideration.

        ii. Determining whether the seminar is supported by private or otherwise anonymous sources.

            Please see my response to Question 16(b)(i).

        iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.

            Please see my response to Question 16(b)(i).

        iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.

            Please see my response to Question 16(b)(i).

        v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

            Please see my response to Question 16(b)(i).

    c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

        Please see my response to Question 16(b)(i).

Nomination of Justin Reed Walker, to be United States District Court Judge
for the Western District of Kentucky
Questions for the Record
Submitted August 7, 2019

QUESTIONS FROM SENATOR COONS

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

   The Supreme Court has stated, "[w]e begin, as we do in all due process cases, by examining our Nation's history, legal traditions, and practices." *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997) (citing *Planned Parenthood v. Casey,* 505 U.S. 833, 849-50 (1992); *Cruzan v. Director, MDH*, 497 U.S. 261, 269-79 (1990); *Moore* v. *East Cleveland,* 431 U.S. 494, 503 (1977) (plurality opinion).

   a. Would you consider whether the right is expressly enumerated in the Constitution?

      Yes, the Supreme Court has considered whether the right is expressly enumerated, and I would follow its guidance.

   b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

      Yes. Please see my response to Question 1.

   c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of a court of appeals?

      I would consider whether the right has previously been recognized by Supreme Court or circuit precedent, and I would follow binding precedent fully and faithfully. In the absence of a binding precedent, I would consider precedents of other circuit courts.

   d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right had been recognized by Supreme Court or circuit precedent?

      Yes.

   e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? *See Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

If confirmed, I would follow *Lawrence*, *Casey*, and all other binding precedents fully and faithfully.

f. What other factors would you consider?

Please see my response to Question 1.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?

The Supreme Court held in *United States v. Virginia* (1996) that the Fourteenth Amendment's Equal Protection Clause prohibits distinctions on the basis of sex unjustified by an "exceedingly persuasive justification." A district court judge should follow *United States v. Virginia* fully and faithfully.

a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

The Supreme Court has provided guidance for interpreting the Fourteenth Amendment, and if confirmed, I would apply those precedents fully and faithfully. The Canons of Judicial Conduct prohibit me from going beyond that and offering personal views on the merits of Supreme Court decisions, predicting the outcome of future litigation before me, or wading into current controversies.

b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

Please see my response to Question 2(a).

c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

Please see my response to Question 2(a).

d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

Please see my response to Question 2(a).

3. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

Griswold v. Connecticut and *Eisenstadt v. Baird* recognized a right to use contraceptives, and if confirmed, I would follow *Griswold*, *Eisenstadt*, and all Supreme Court precedent fully and faithfully.

a. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

Roe v. Wade, *Planned Parenthood v. Casey*, and *Whole Woman's Health v. Hellerstedt* recognized such a right, and if confirmed, I would follow these and all Supreme Court precedent fully and faithfully.

b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

Lawrence v. Texas recognized such a right, and if confirmed, I would follow *Lawrence* and all Supreme Court precedent fully and faithfully.

c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Please see my responses to Questions 3, 3(a), and 3(b).

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600-01 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.
   a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

   The Supreme Court and Sixth Circuit have provided guidance on when to consider evidence that sheds light on our changing understanding of society and sociological and scientific data. *See, e.g.*, *United States v. Virginia*, 518 U.S. 515 (1996). If confirmed, I would follow those precedents fully and faithfully.

   b. What is the role of sociology, scientific evidence, and data in judicial analysis?

   Please see my response to Question 4(a).

5. In the Supreme Court's *Obergefell* opinion, Justice Kennedy explained, "If rights were

defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians."

a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

Obergefell is binding precedent, and if confirmed, I would follow *Obergefell* and all Supreme Court precedents fully and faithfully. Related issues are implicated by pending or impending litigation, and the Canons of the Code of Conduct for United States Judges therefore prohibit me from expressing a view beyond that.

b. When is it appropriate to apply Justice Kennedy's formulation of substantive due process?

Please see my response to Question 5(a).

6. You are a member of the Federalist Society, a group whose members often advocate an "originalist" interpretation of the Constitution.

a. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the "circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light" on the amendment's original meaning, "it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." 347 U.S. at 489, 490-93. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

Brown v. Board of Education is a landmark decision, as was stated at my confirmation hearing. If confirmed, I would follow *Brown* and all Supreme Court precedents fully and faithfully. Historians and legal academics have debated the relationship between *Brown* and originalism, but my academic scholarship has not explored that relationship.

b. How do you respond to the criticism of originalism that terms like "'the freedom of speech,' 'equal protection,' and 'due process of law' are not precise or self-defining"? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism (last visited Aug. 7, 2019).

Please see my response to Question 6(a).

c. Should the public's understanding of a constitutional provision's meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

The Supreme Court has stated that the original meaning of constitutional text can be important to determining the text's meaning. *See, e.g.*, *Crawford v. Washington*, 541 U.S. 36 (2004).

d. Does the public's original understanding of the scope of a constitutional provision constrain its application decades later?

Please see my response to Question 6(c).

e. What sources would you employ to discern the contours of a constitutional provision?

If confirmed, I would consider Supreme Court and Sixth Circuit precedent when discerning the contours of a constitutional provision, and I would follow such precedent fully and faithfully.

7. You graduated from law school in 2009 and clerked for two years.
   a. What motions have you argued under the Federal Rules of Civil Procedure?

My career has been largely dedicated to academic and service in the government. In particular, the primary focus of my career has been as a teacher of trial process, criminal procedure, evidence, and constitutional law, all with a focus on litigation and judicial decisionmaking; I've also been fortunate to write numerous law review articles on complex questions of federal law published by some of the nation's leading law journals. At the same time, even though it's unusual for a full-time law professor, I've maintained a private law practice. Although I have not engaged in the specific in-court tasks identified in these questions, in my time at a large national law firm, then as a solo practitioner, and now as a partner at another large national law firm, I have litigated complex legal questions of civil procedure, criminal procedure, criminal law, constitutional law, labor law, and administrative law. At trial in federal court, I have performed extensive legal work assisting co-counsel with jury selection and questions of criminal procedure, evidence, discovery, and jury instructions, although oral argument was presented by co-counsel. I also have experience in state court and took deposition testimony for state court. My experience also includes clerkships for two Supreme Court justices – then-Judge Brett Kavanaugh and Justice Anthony Kennedy.

   b. What motions have you argued under the Federal Rules of Criminal Procedure?

Please see my response to Question 7(a).

   c. Have you presented argument in a federal court on an evidentiary issue governed by the Federal Rules of Evidence?

Please see my response to Question 7(a).

   d. Have you taken a deposition in a federal court proceeding?

Please see my response to Question 7(a).

e. Have you defended a deposition in a federal court proceeding?

Please see my response to Question 7(a).

f. Have you argued a discovery motion in federal court?

Please see my response to Question 7(a).

g. Have you argued a motion in limine in federal court?

Please see my response to Question 7(a).

h. Have you participated in a federal court mediation?

Please see my response to Question 7(a).

i. Have you participated in a pre-trial conference in federal court?

Please see my response to Question 7(a).

j. Have you participated in voir dire in federal court?

Please see my response to Question 7(a).

k. Have you examined a fact witness in federal court?

Please see my response to Question 7(a).

l. Have you examined an expert witness in federal court?

Please see my response to Question 7(a).

8. In a 2018 article in *The Federalist* entitled "Brett Kavanaugh Said Obamacare Was Unprecedented and Unlawful," you called the Supreme Court's opinion in *National Federation of Independent Business v. Sebelius* an "indefensible decision." Please explain your assertion that this decision upholding key provisions of the Affordable Care Act is "indefensible."

I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from going beyond what was said in the 2018 article.

9. In response to your Senate Judiciary Questionnaire, you submitted a draft article entitled "The Kavanaugh Court and the *Schechter*-to-*Chevron* Spectrum: How the New Supreme Court Will Make the Administrative State More Democratically Accountable," which includes a critique of *Humphrey's Executor*, 295 U.S. 602 (1935), a critical precedent upholding the constitutionality of independent agencies. Do you agree that the rationale and holding of *Humphrey's Executor* remain good law?

   Humphrey's Executor is a binding precedent of the Supreme Court. If confirmed I would follow it and all other precedents of the Supreme Court.

Nomination of Justin Walker
United States District Court for the Western District of Kentucky
Questions for the Record
Submitted August 7, 2019

QUESTIONS FROM SENATOR BOOKER

1. During your hearing, you confirmed you have never served as sole or lead counsel in any case tried to verdict or judgment. In response to Senator Feinstein's questions, you also confirmed that you have never presented an argument in front of a federal jury, you have never been involved in any bench trials, and you have only taken one deposition.

   In answering Senator Feinstein's question, you pointed to your extensive academic experience as a reason why you are nevertheless qualified to serve as a district court judge. You also referenced the academic careers of Justice Breyer, Justice Kagan, and Judge Rao. Yet, each of these three individuals had significant legal practice experience before being confirmed as judges, including as special prosecutors, special counsels, private practice experience, and work in the White House Counsel's office.[1]

   Legal practice experience—especially experience arguing in front of a judge or a jury—is crucial for a district court judge in order for them to be able to fully understand, oversee, and guide litigants through the adjudicatory process.

   a. Please elaborate on why—given the above information—you are qualified to be a district court judge.

      I have spent my career immersed in the law with a record that demonstrates my qualifications in four ways. First, in my primary role as a law professor, I teach trial process, criminal procedure, evidence, and constitutional law, all with a focus on litigation and judicial decisionmaking. I've been instrumental in preparing nearly 200 law students to be practice-ready on day one of graduation, to hang out a shingle in many cases, and to represent clients effectively in court. Second, in my role as an academic, I've also written law review articles on criminal procedure, the judiciary, and constitutional law, and I feel fortunate that some of the leading law journals in the country have published and recognized my scholarship. Third, I've done something quite unusual for a full-time law professor – I've maintained a private law practice and litigated complex legal questions of civil procedure, criminal procedure, criminal law, constitutional law, labor law, and administrative law. This private practice has included litigation at a large national law firm, then as a solo practitioner, and now as a partner at another large national law firm. I've also clerked for two Supreme Court Justices. Finally, there is a reason why hundreds of local lawyers have written 17 letters to this committee. They are the litigators and law professors and former students who know me best, and they say that my experience demonstrates an ability to analyze complex legal questions, to think on my feet, and to listen and learn with humility and an evenhanded temperament.

2. In your Questionnaire, you stated that approximately 10% of your practice has involved

in criminal proceedings. At your hearing, you confirmed that you have only worked on one criminal case, a pro bono case in which you represented an individual "accused of conspiring to possess with intent to distribute heroin and methamphetamine."[2]

a. A district court judge handles a vast array of criminal matters. Given your lack of experience in this area, why are you qualified to preside over criminal proceedings?

I testified at the July 31 hearing that "I have worked, in addition to that [pro bono] case, on some other criminal matters." With regard to my qualifications, please see my response to Question 1(a).

3. In a July 3, 2018 op-ed published in *The Federalist*, you wrote that then-Judge Kavanaugh should have been "the next Supreme Court justice" because "[h]e has by far the strongest, most consistent, most fearless record of constitutional conservatism of any

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[1] *See, e.g. Justice Stephen G. Breyer*, The Supreme Court Historical Society, https://supremecourthistory.org/history-of-the-court/the-current-court/justice-stephen-breyer/; *Justice Elena Kagan*, The Supreme Court Historical Society, https://supremecourthistory.org/history-of-the-court/the-current-court/justice-elena-kagan/index.html; *President Donald J. Trump Announced Nomination of OIRA Administrator Neomi Rao to Replace Justice Brett Kavanaugh on the D.C. Circuit*, whitehouse.gov (Nov. 14, 2018), https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-announces-nomination-oira-administrator-neomi-rao-replace-justice-brett-kavanaugh-d-c-circuit/.

[2] SJQ at 32, 34.

federal court of appeals judge in the country."[3] You also stated that Judge Kavanaugh was "by far the strongest choice for the job" because "he has repeatedly fought for principles of textualism and originalism, reined in regulatory overreach," and "would be a forceful conservative justice for decades to come."[4] You also stated that Judge Kavanaugh's nomination "would continue President Trump's exemplary record of selecting the best-qualified person for the Supreme Court."[5]

Additionally, in a July 8, 2018 *Fox News* interview, you were asked whether you "expect[ed] a new Supreme Court configuration to go after *Roe v. Wade*."[6] You responded that "Donald Trump has an opportunity to find a rock solid, conservative all-star who's going to be an applier of textualism, originalism, and conservative legal principles on all the issues."[7]

a. Your praise of Justice Kavanaugh's dedication to "constitutional conservatism" implies that you too subscribe to a theory of "constitutional conservatism." Do you also consider yourself a "constitutional conservati[ve]?" If so, what does "constitutional conservatism" mean to you?

   I used the phrase "constitutional conservative" to refer to fidelity to text, respect for the separation of powers, and the humility to know that a judge's role is to apply the law rather than to make the law. Those legal principles are important to me.

b. Do you believe you were also nominated by President Trump because of your "consistent . . . record of constitutional conservatism?"

   As a nominee for a judicial office, it is not my place to speculate why I was selected by the President. However, if confirmed, I will be faithful to text, to the separation of powers, and to the limited role of a judge as someone who applies the law, rather than making the law.

c. Your praise of Justice Kavanaugh's dedication to "principles of textualism and originalism" implies that you too adhere to those principles. Do you also consider yourself dedicated to "principles of textualism and originalism?"

   The interpretation of statutory and constitutional text is often not easy, and it does not always lend itself to easy labels, which can sometimes confuse more than they clarify. Justice Kagan once said to the Judiciary Committee, "We are all originalists" Regardless of what labels are used, I believe that an inquiry into a statute or constitution's meaning begins with its text, including how prior judicial decisions have interpreted that text and how that text was understood at the time of its enactment into law. When there is binding precedent, that precedent controls the outcome in the district court.

   i. If so, what does textualism mean to you?

      Please see my response to the first question in Question 3(c).

ii. What does originalism mean to you?

Please see my response to the first question in Question 3(c).

iii. Do you believe you were also nominated by President Trump because of your belief in textualism and originalism?

Please see my response to Question 3(b).

d. Do you consider yourself "a rock solid, conservative all-star who's going to be an applier of textualism, originalism, and conservative legal principles on all the issues?"

Please see my response to the first question in Question 3(c), which describes my approach to statutory and constitutional interpretation.

4. Impartiality is a fundamental part of a federal judge's duties. It is central to the rule of law and judicial independence. Canon 3 of the Code of Conduct for United States Judges instructs: "A Judge Should Perform the Duties of the Office Fairly, Impartially and

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[3] Justin Walker, *Brett Kavanaugh Said Obamacare Was Unprecedented and Unlawful*, THE FEDERALIST (July 3, 2018), *available at* https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/ (hereinafter Walker, *Unprecedented and Unlawful*).
[4] *Id.*
[5] *Id.*
[6] *Fox News*, July 8, 2018. *Available at*: https://video.foxnews.com/v/5806728724001/#sp=show-clips
[7] *Fox News*, July 8, 2018. *Available at*: https://video.foxnews.com/v/5806728724001/#sp=show-clips

Diligently." Canon 3(C), moreover, specifically provides: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."

In the same July 3, 2018 op-ed discussed in Question 3, you defended Judge Kavanaugh's analytical approach in his dissent *Seven-Sky v. Holder*. Notably, you drew a distinction between Judge Kavanaugh's dissent and the Supreme Court's ultimate decision in *NFIB v. Sebelius* to uphold the Affordable Care Act's (ACA) individual mandate as constitutional.[8] In doing so, you describe the Court's ruling as an "indefensible decision."[9] You conclude by saying that "Six years later, with the individual mandate *finally* coming off the books thanks to President Trump, the stakes of this nomination could not be higher."[10]

a. Please explain your comments on the Court's ruling in *NFIB v. Sebelius* and why you called the decision "indefensible." Do you stand by these comments?

   In that op-ed, I was speaking in the role of an academic and a citizen engaged in the political process. I understand that that role is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from going beyond what was said in the 2018 article.

b. Do you believe that the Supreme Court's ruling in *NFIB v. Sebelius* is settled law? If confirmed, would you adhere fully to the letter and spirit of all Supreme Court decisions, including *NFIB v. Sebelius*?

   NFIB v. Sebelius is a precedent of the Supreme Court. If confirmed, I would adhere fully to all Supreme Court and Sixth Circuit decisions, including *NFIB v. Sebelius*.

c. Given your past criticisms of the ACA and the Court's rulings involving it, please explain why, if you're confirmed, someone in your courtroom should expect to get a fair hearing from an impartial judge in a case involving the ACA.

   The role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. My model in such matters is Justice Robert Jackson, who famously issued decisions as a Justice that were in conflict with positions he argued as Attorney General. He understood, as do I, that no judge should approach a legal question with his or her mind made up regarding the outcome. Only after considering the arguments from all sides of the question should a judge make a decision, guided by the law, and affected in no way by the judge's personal views.

d. Given your past criticisms of the ACA and the Court's rulings involving it, would your impartiality in cases involving the ACA reasonably be questioned?

   Please see my answer to Question 4(c).

5. In 2018, you made multiple statements regarding Justice Kavanaugh's nomination process and its handling by this Committee. In one October 2018 interview with *Fox News*, you stated that "this is a farce."[11] You then accused Senators on this Committee, including Senators Blumenthal and Hirono, of attempting to "assassinate Judge Kavanaugh's character."[12] In another October 2018 interview, you stated that there had been a "vicious attack by Democrats . . . [T]hey laid in wait and then they ambushed Judge Kavanaugh, the Democrats did." You even accused Senate Democrats of "a new low because . . . they're exploiting the issue of sexual assault . . . for their own partisan, political gains."[13] Finally, you stated that if Judge Kavanaugh had withdrawn his nomination "it would reward the misbehavior by the people on the Senate Judiciary Committee who have launched this vicious ambush."[14]

[8] Walker, *Unprecedented and Unlawful*.
[9] *Id.*
[10] *Id.* (emphasis added).
[11] Kennedy, *Fox Business,* Oct. 1, 2018 (SJQ Attachments 12(e) at p. 524).
[12] *Id.*
[13] *NightSide with Dan Rea, WBZ Boston* (Oct. 3, 2018), *available at* https://player.fm/series/nightside-with-dan-rea-1761579/jay-gonzales-justin-walker at minute mark 00:42:36.
[14] *NightSide with Dan Rea, WBZ Boston,* Oct. 3, 2018, *available at*

a. Please explain your statement that the Kavanaugh nomination process was a "farce." Do you stand by these comments?

As I stated at the time, I believe all serious accusations of sexual misconduct should be treated seriously and with respect. I was intending to refer to a confirmation process that I stated had been unfair to Justice Kavanaugh and Dr. Ford.

I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from saying more about politicians or political controversies than what was said last summer.

b. Please explain your accusation that Senators—including Senators Blumenthal and Hirono—were attempting to "assassinate Judge Kavanaugh's character." Do you stand by these comments? If so, please provide specific examples of such attempts.

Please see my response to Question 5(a).

c. Please explain your statement that Senate Democrats "laid in wait" and "ambushed Judge Kavanaugh." Do you stand by these comments?

Please see my response to Question 5(a).

d. Please explain your statement that Senate Democrats "exploit[ed] the issue of sexual assault . . . for their own partisan, political gains." Do you stand by these comments?

Please see my response to Question 5(a).

e. Please explain your statement that there had been "misbehavior by the people on the Senate Judiciary Committee." Do you stand by these comments?

Please see my response to Question 5(a).

6. You were a law clerk for then-Judge Kavanaugh when he authored his dissent in *Heller v. District of Columbia*. Since then, you have commented on that dissent on several occasions. In one instance, you described it as "[p]robably the most thorough pro-Second Amendment analysis by a lower-court judge in history."[15] On another occasion, you stated that Judge Kavanaugh's analysis—which you claim would prevent judges from considering public safety and increased instances of mass shootings—is "very thoughtful" and "historically based."[16]

a. Your apparent praise of then-Judge Kavanaugh's analysis in *Heller II* implies support for his approach to analyzing legislation designed to reduce gun violene.

Do you agree with the analysis and conclusion reached by then-Judge Kavanaugh in *Heller II*?

I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from saying more than what was said in the interviews last summer about specific precedents and legal questions that could come before federal judges.

7. In July 2018, after then-Judge Kavanaugh's nomination to the Supreme Court, you were quoted in the *Baltimore-Post Examiner* saying:

> This is a conservative revolution as big as the Reagan Revolution. Issues like affirmative action, school prayer, gun rights, and abortion will see drastic changes. I predict an end to affirmative action, an end to successful litigation about religious displays and prayers, an end to bans on semi-automatic rifles, and an end to almost all judicial [decisions allowing abortion]. This change will

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https://player.fm/series/nightside-with-dan-rea-1761579/jay-gonzales-justin-walker at minute mark 00:51:10.

[15] Yvonne Gonzalez, *Kavanaugh Hearing Crucial.for Undecided Senators, Cortez Masto Says,* LAS VEGAS SUN (Sept. 26, 2018) (SJQ Attachments 12(e) at p. 539).

[16] Dana Perino, *Fox News,* Sept. 3, 2018. *Available at* https://grabien.com/file.php?id=450869 at minute mark 2:30.

give Donald Trump the most conservative judicial legacy of any Republican in history, by far.[17]

You also described then-Judge Kavanaugh positively, stating that "Brett Kavanaugh is courageous, tough, defiant" and had "been a lonely voice defending conservative legal principles without exception, without apology, and without surrender."[18] That article described you as "lavish[ing] praise" on then-Judge Kavanaugh's nomination and placed you in the article as one of several groups offering "swift praise" of then-Judge Kavanaugh's nomination.[19]

a. These statements, along with the article's description of the context of your statements and other statements described in previous questions, strongly suggest your endorsement of the idea of Justice Kavanaugh bringing "an end to affirmative action, an end to successful litigation about religious displays and prayers, an end to bans on semi-automatic rifles, and an end to almost all judicial [decisions allowing abortion." Did you support the prospect of Justice Kavanaugh leading to the potential changes described here? Do you still support those changes?

   Several of those statements described predictions I was asked to predict in my role as an academic and a citizen engaged in the political process – the same predictions made by many ideologically diverse legal experts. Others reflected my view of Justice Kavanaugh's temperament and fidelity to text, constitutional structure, and the limited role of judges. I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from saying more than what was said in the interviews last summer about specific legal issues that could come before federal judges.

b. If you believe the characterization of these comments to be incorrect, did you ever dispute the *Baltimore-Post Examiner*'s—or any other publication or news media outlet's—characterization of your comments? If you did not, why not?

   Please see my response to Question 7(a).

c. Please explain your comments on why you think the nomination of Justice Kavanaugh will end affirmative action?

   Please see my response to Question 7(a).

d. Please explain your comments on why you think the nomination of Justice Kavanaugh will end bans on semi-automatic weapons?

   Please see my response to Question 7(a).

8. In several interviews with *Fox News*, you "encourage[d] [President Trump to] read the

opinion by Judge Kavanaugh about now allowing illegal immigrants to vote in union elections."[20] This dissent authored by then-Judge Kavanaugh in *Agri Processor Co. v. NLRB* argued that—in your words—"undocumented workers . . . should not be allowed to vote [in union elections]."[21] In one interview, you then immediately followed this encouragement by saying that "on issue after issues, 300 times out of 300 times, every

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[17] Gary Gately, *Kavanaugh Nomination Draws Swift Praise, Condemnation*, BALTIMORE POST-EXAMINER, July 10, 2018 (SJQ Attachments 12(e) at p. 733).
[18] *Id.*
[19] *Id.*
[20] America's News Headquarters, Fox News, June 30, 2018, *available at* https://video.foxnews.com/v/5803900383001/#sp=show-clips; Shannon Bream, *Fox News*, July 9, 2018 (SJQ Attachments 12(e) at p. 912).
[21] America's News Headquarters, Fox News, June 30, 2018, *available at* https://video.foxnews.com/v/5803900383001/#sp=show-clips.

opinion Judge Kavanaugh has written suggests a strong . . . fighting for the Constitution and fighting for conservative principles."[22]

a. Why did you "encourage" President Trump to read then-Judge Kavanaugh's dissent in *Agri Processor Co. v. NLRB*?

My comments in that interview showed my belief that Justice Kavanaugh's opinion, like all his opinions, reflected his approach to the law and showed my belief that I expected President Trump would respect Justice Kavanaugh's approach to the law.

b. Do you agree with the analysis and conclusion reached by then-Judge Kavanaugh in his dissent in *Agri Processor Co. v. NLRB*?

I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or a judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from opining on the merits of a legal precedent or saying more than what was said in the interview last summer.

c. Your statements strongly indicate that you believe that then-Judge Kavanaugh's dissent in *Agri Processor Co. v. NLRB* is an accurate representation of him "fighting for the Constitution and fighting for conservative principles." Why is that?

Please see my responses to Questions 8(a) and 8(b).

d. Do you—as your comments suggest—consider supporting a company's decision to refuse to allow undocumented immigrants to vote in a union election "fighting for the Constitution?"

Please see my responses to Questions 8(a) and 8(b).

9. 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?

The Supreme Court has given lower courts guidance on this question. The Court has said that as a general matter, legislative history is not necessary when a statute is unambiguous, while it can be considered when a statute is ambiguous. Lower court judges should apply all Supreme Court precedents with regard to legislative history and should consider all arguments raised by litigants, including arguments

related to 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 9(a).

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

Every case that comes before a judge requires the judge to remember and respect the limited role of the judiciary in our constitutional structure.

a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.[23] Was that decision guided by the principle of judicial restraint?

The Supreme Court's decision in *Heller* is binding precedent, and if confirmed, I would apply it fully and faithfully. The Canons of Judicial Conduct prohibit me from going beyond that and offering personal views on the merits of Supreme Court decisions.

b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.[24] Was that decision guided by the principle of judicial restraint?

The Supreme Court's decision in *Citizens United* is binding precedent, and if confirmed, I would apply it fully and faithfully. The Canons of Judicial Conduct prohibit me from going beyond that and offering personal views on the merits of Supreme Court decisions.

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[22] *Id.*
[23] 554 U.S. 570 (2008).
[24] 558 U.S. 310 (2010).

c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.[25] Was that decision guided by the principle of judicial restraint?

The Supreme Court's decision in *Shelby County* is binding precedent, and if confirmed, I would apply it fully and faithfully.

11. 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.[26] 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.[27]

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

    The right to vote is fundamental. As Chief Justice Roberts said, "it is preservative of all the other rights." The Canons of Judicial Conduct prohibit me from going beyond that and opining on current controversies.

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

    Please see my answer to Question 11(a).

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

    Please see my answer to Question 11(a).

12. 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.[28] Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.[29] 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.[30] In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.[31]

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

    Yes, unfortunately there is implicit racial bias in our criminal justice system.

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

I am aware of data like the statistics referenced in the question indicating that people of color are disproportionately represented in our nation's jails and prisons.

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[25] 570 U.S. 529 (2013).
[26] *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), https://www.brennancenter.org/analysis/debunking-voter-fraud-myth.
[27] *Id.*
[28] 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.
[29] *Id.*
[30] 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.
[31] *Id.*

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.

Although this issue is of great importance, it has not been a focus of my academic research and scholarship.

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.[32] Why do you think that is the case?

The disparity referenced should be of serious concert to society and the legal community. The reason for the disparity is a topic of political, scholarly, and societal discussion. Although, I have not had an occasion to study these issues personally or form a view on them myself, I appreciate their importance.

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.[33] Why do you think that is the case?

Please see my response to Question 12(d).

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

Judges must be aware of these issues of great concern and should welcome opportunities to learn more. Bias should have no role in the courtroom, and if confirmed, I am committed to continued study and any other appropriate steps useful to creating a courtroom where litigants have confidence in equal justice.

13. 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.[34] In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.[35]

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.

This question raises important public policy issues that properly are the subject of serious consideration and public conversation. Although I have not had occasion to study these issues personally or form a view on them myself, I appreciate their importance.

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 13(a).

14. 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.

15. 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.

16. Do you believe that *Brown v. Board of Education*[36] was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

As I said at my confirmation hearing, *Brown* was correctly decided.

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[32] 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.
[33] Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)
[34] 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.
[35] *Id.*
[36] 347 U.S. 483 (1954).

17. Do you believe that *Plessy v. Ferguson*[37] was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Plessy was not correctly decided.

18. 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.

19. 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."[38] Do you agree with President Trump's view that a judge's race or ethnicity can be a basis for recusal or disqualification?

The canons of judicial conduct preclude me, in my role as a judicial nominee, from commenting on the statements of political leaders.

20. 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."[39] Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

The canons of judicial conduct preclude me, in my role as a judicial nominee, from commenting on the statements of political leaders.

[37] 163 U.S. 537 (1896).
[38] 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.
[39] 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 August 7, 2019
For the Nomination of

Justin Reed Walker, to the U.S. District Court for the Western District of Kentucky

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?**

    A district court judge should follow relevant legal authorities when sentencing a defendant. This includes calculating the Guidelines range, considering policy statements in the Guidelines regarding departures, and considering the seven § 3553(a) sentencing factors. The process includes review and consideration of rules of procedure, relevant precedent, the indictment, the presentence report, any victim impact statements, any statements by the defendant's behalf, the arguments of the prosecution and defense, and any statements by the defendant. Binding precedents, the Guidelines, policy statements, and the § 3553(a) factors inform a judge's consideration of a fair and proportional sentence. A fair sentence is "sufficient, but not greater than necessary."

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

    Please see my response to Question 1(a).

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

    The *Guidelines Manual* addresses circumstances that counsel in favor of a departure. For example, a defendant's substantial assistance is often a ground for a downward departure. USSG § 5K1.1. Another example is that, in appropriate circumstances, a district judge should depart when aggravating or mitigating circumstances are not "of a kind, or to a degree, not adequately taken into consideration" by the Sentencing Commission. USSG § 5K2.0(a)(1). In addition, a judge must exercise the discretion required by *Booker* and guided by 18 U.S.C. § 3553(a).

    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]

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

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

The question of whether to establish mandatory minimum sentences is a controversial political question. The Canons of Judicial Conduct prohibit me from opining on the political process or political controversies.

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

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

   If confirmed, I would apply binding statutes and binding precedents fully and faithfully. With regard to commentary in dicta about the merits of federal statutes or the outreach imagined in Questions 1(d)(iv)(2)-(3), if I disagreed with a mandatory minimum sentence, I would be mindful of the scope of a judge's discretion, the limits of a judge's power, and the costs and benefits of the commentary with respect to the proper balance of power between the three branches of government.

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?**

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

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

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.**

      Yes. *See Demographic Differences in Sentencing: An Update to the 2012 Booker Report* (United States Sentencing Commission 2017).

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. If confirmed, I plan to take steps to ensure that qualified minorities and women are given serious consideration with regard to positions for which I exercise hiring authority.