

**Nominations**  
**Hearing before the Senate Committee on the Judiciary**  
**Questions for the Record**  
**June 24, 2020**

**QUESTIONS FROM SENATOR BLUMENTHAL**

Questions for Judge David W. Dugan

1. During your 2018 campaign to become a Circuit Judge on the Third Judicial Circuit in Illinois, you submitted a Judicial Candidate Survey to Illinois Right to Life in which you wrote, “While I would, if called upon in my role as a Judge, follow the law as it has been established, I do believe that, for a number of reasons, the case of *Roe v. Wade* is sorely misplaced.”<sup>1</sup> When asked about this statement by Senator Durbin, you responded, “I cannot comment based upon being a nominee now on *Roe v. Wade*, but you do have my word and you do have my record that I will follow precedent and follow the law, and I always have.”<sup>2</sup>

a. Please state—

i. whether it is still your view that “*Roe v. Wade* is sorely misplaced”?

As a judicial nominee, it would be inappropriate for me to now comment on whether the Supreme Court rightly or wrongly decided a particular case. See Code of Conduct for United States Judges, Canons 2(A) and 3(A)(6). I will, if confirmed, faithfully and dutifully apply binding precedent, including *Roe v. Wade* and its progeny, without regard for my personal beliefs or will.

ii. how you would “follow precedent and follow the law,” specifically with respect to *Roe v. Wade* and its progeny.

If presented with such an issue as a judge, I would review and study the numerous cases that have been decided by the Supreme Court that have upheld *Roe v. Wade*, and faithfully apply that binding precedent to the facts of the case, without regard to my personal beliefs.

b. On the issue of precedent and *Roe v. Wade* specifically, please explain --

i. on which courts *Roe* is and is not binding.

I am not aware of any United States Court or state court where *Roe* is not binding precedent. *Roe v. Wade* is “settled law” and has survived numerous challenges.

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<sup>1</sup> Candidate Questionnaire, David Dugan, Illinois Right to Life Action (Dec. 31, 2017) [see Senate Judiciary Questionnaire Attachments 12(c) at p. 16].

<sup>2</sup> *Nominations Before the S. Comm. On the Judiciary*, 116th Cong. (2020), available at <https://www.judiciary.senate.gov/meetings/06/24/2020/nominations-1>.

- ii. the central holding of *Roe* and whether *Roe* protects a pregnant person's right to choose.

The Supreme Court held that a woman's decision to choose abortion is encompassed by the right of privacy and, therefore, protected. Further, "[w]here certain 'fundamental rights' are involved, the Court has held that regulation limiting these rights may be justified only by a 'compelling state interest,' (citations omitted) and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake." *Roe v. Wade*, 410 U.S. 113, 155, (1973) *holding modified by Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

2. In your response to the aforementioned Judicial Candidate Survey, you stated, "My belief is that life begins at conception and that from that moment forward, taking that child's life is the taking of a human life." When asked by Senator Hirono if this was still your personal view, you responded, "I think I'd be violating the canons, and it's very unfair to people who might appear before me to express now that I'm a nominee what my personal views are."
  - a. Please identify the specific "canons" that you would be "violating" were you to answer questions about statements you made before you were nominated to the District Court for the Southern District of Illinois and explain why answering Senator Hirono's question would violate them.

I viewed Senator Hirono's question regarding my current personal views to call for a response that would necessarily touch upon the issue of the commencement of life which contains political questions and is being considered in pending litigation. I believed that any such response would violate the Code of Conduct for United States Judges, specifically Canon 1 (independence of judiciary and deference to judgments of the Courts); Canon 2(A) (impartiality of judiciary); and Canon 3(A)(6) (refraining from making public comment).

**b. Please explain—**

- i. how you plan to separate your "personal views" from your judicial decision-making and the specific affirmative steps you will take to do so.

As I testified at the hearing in response to Senator Hirono's question, my "personal views" have not, while a state court judge, and will not, if confirmed, be a part of or be reflected in my judicial decision making. All judges must make decisions and rulings independent of their personal views. I believe that I am no exception. To that end, I will, if confirmed, faithfully and dutifully follow Supreme Court and Seventh Circuit precedent on this and all issues.

- ii. how you plan to ensure that litigants can safely believe that your previously stated views on abortion from 2017 will not impact the result of the cases they bring

before you.

All judges are bound by their oath to faithfully and dutifully apply binding precedent regardless of his or her personal beliefs or will. Presently, in my current position as a state court judge, and, if confirmed as a federal district court judge, I will continue to faithfully and dutifully apply binding precedent, including *Roe v. Wade* and its progeny, without regard for my personal beliefs or will. Additionally, as in all cases, I will review the matter for any basis for disqualification or recusal consistent with 28 U.S.C. §§ 455 and 144 as well as other applicable statutes and rules.

c. Please state whether it is still your position, as you stated in the aforementioned Judicial Candidate Survey, that—

- i. “life begins at conception and that from that moment forward, taking that child’s life is the taking of a human life.”

Please see my response to Question 2.a. above. Presently, in my current position as a state court judge, and, if confirmed as a federal district court judge, I will continue to faithfully and dutifully apply binding precedent of the Supreme Court and Seventh Circuit, including *Roe v Wade* and its progeny, and I will do so without regard for any personal beliefs or will.

- ii. “sound public policy should give due consideration to the decision-making involvement of the parents of the child who finds herself pregnant. . . . To allow such a weighty decision to be made by a minor, in a presumably very emotional and maybe even irrational state, invites the then expedient solution which so often ends in great regret and grief once the wrong decision is carried out.”

With regard to the policy of giving due consideration to the notion of allowing parental involvement in the decision making process of a pregnant minor child, this is a question that is within the purview of Congress and lawmakers. Additionally, I understand that this issue is one that is involved in pending or impending litigation. Therefore, as a judicial nominee, it would be inappropriate for me to comment on this issue or policy concerns that may be considered by Congress. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(c). Presently, in my current position as a state court judge, and, if confirmed as a federal district court judge, I will continue to faithfully and dutifully apply binding precedent without regard for my personal beliefs or will.

- iii. “it is an incongruent argument for those who are ‘pro choice’ to advocate that in only the case of the abortion ‘medical procedure’ should a patient be deprived of the knowledge and information for her to make a fully informed decision. Public policy requires that her decision be based on all available information, including, not just the physical, but also the emotional and psychological, risks to her.”

Please see my response to question 2.c.ii above.

3. In your response to the Judicial Candidate Survey, you stated, “I have been deeply involved in various organizations as a pro-life advocate.” You explained that you have “serv[ed] as a supporter, volunteer, board member, and then president of, and legal counsel for, a large faith-based women’s pregnancy medical center.”
  - a. Please list all the “various organizations” with which you have been involved “as a pro-life advocate.”

I have been at various times prior to becoming a judge involved in the following organizations: Arms of Love, corporate attorney and financial supporter; Options Now Medical Pregnancy Center, corporate attorney, board member, financial supporter; Thrive Metro East, financial supporter; First Baptist Church of Bethalto, member, elder, financial supporter. In addition, I attended the meeting and luncheon at which the Vision 2020 concept was founded. My involvement has centered around faith-based efforts to reduce or eliminate the need or demand for abortion by providing options, choices and support for young women who might be struggling through the decision.

- b. Please describe the roles you held and the work that you did for each of these organizations [Question 3(a)], without violating any privilege or duty of confidentiality, “as a pro-life advocate.”

Please see my response to question 3.a.

- c. Please explain how your past involvement in these “various organizations as a pro-life advocate” will not translate to your role on the federal bench and what affirmative steps you will take to overcome your “pro-life” biases.

Respectfully, my “personal views” have not during my time serving as a state court judge and will not, if confirmed, enter into or be reflected in my judicial decision making. I believe that all judges must make decisions and rulings based on the law and independent of their personal views, whatever they might be. I am no exception. To that end, I will, if confirmed, faithfully and dutifully follow Supreme Court and Seventh Circuit precedent on this and all issues.