

**Nomination of Kristi Johnson to the United States District Court for the  
Southern District of Mississippi  
Questions for the Record  
Submitted September 16, 2020**

**QUESTIONS FROM RANKING MEMBER FEINSTEIN**

1. As Solicitor General of Mississippi, you are leading Mississippi’s effort to intervene in a lawsuit filed by California challenging the EPA’s decision to repeal the Waters of the United States rule, also known as WOTUS. The repeal of WOTUS threatens to increase pollution in waterways across the country by causing freshwater streams and wetlands – including two out of three freshwater streams in California – to lose protections under the Clean Water Act.

**a. Why did the State of Mississippi intervene in this lawsuit?**

The State of Mississippi, along with twenty-two other states, intervened in *California v. Wheeler* in support of the EPA’s new Clean Water Act Rule. The Mississippi Attorney General, as the democratically-elected officer for the State of Mississippi, made the decision to join the State of Georgia to intervene in the case. The Intervening States argued that the 2015 rule encroached on States’ authority to regulate their water resources by expanding the definition of “waters of the United States” without statutory or constitutional justification. *See, e.g., Hodel v. Va. Surface Mining & Reclamation Ass’n Inc.*, 452 U.S. 264, 286-87 (1981) (explaining that a federal rule violates States’ Tenth Amendment powers when it addresses matters that are indisputably attributes of state sovereignty, and when compliance with the rule would directly impair States’ ability to structure integral operations). The new Rule, according to the Intervenor States, better respects States’ traditional regulatory authority over intrastate lands.

**b. Do you support the repeal of protections for the nation’s freshwater streams and wetlands?**

As a judicial nominee, it would be inappropriate for me to comment on this issue because it may be the subject of pending or impending litigation. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6).

**c. Is it your position that the EPA should not exercise its full authority under the Clean Water Act to protect the nation’s water?**

As a judicial nominee, it would be inappropriate for me to comment on this issue because it may be the subject of pending or impending litigation. *See* Code of Conduct for United States Judges, Canons 2(A) and 3(A)(6).

2. 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?**

A lower court must always fully and fully apply Supreme Court precedent regardless of the judge's personal views or policy preferences. It may be appropriate for a judge to highlight conflicts or inconsistencies in Supreme Court precedent and request clarification from the Supreme Court.

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

A district court's decision does not create binding precedent. *Camreta v. Greene*, 563 U.S. 692, 709 n. 7 (2011) (citing 18 J. Moore et al., Moore's Federal Practice § 134.02(1)(d), p. 134–26 (3d ed.2011)). Federal Rules of Civil Procedure 59(e) and 60 provides the standards which a district court may reconsider a prior ruling.

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

The question of when it is appropriate for the Supreme Court to overturn its own precedent is one for the Supreme Court to decide. The Supreme Court has identified factors it considers when deciding to overrule a past decision. See *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2478-2479 (2018). If confirmed, I will fully and faithfully apply all Supreme Court precedent.

3. 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”?**

If confirmed, I will fully and faithfully apply all binding Supreme Court and Fifth Circuit precedent, including *Roe v. Wade*.

**b. Is it settled law?**

Yes, *Roe v. Wade* is binding Supreme Court precedent and settled law.

4. 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, *Obergefell v. Hodges* is binding Supreme Court precedent and settled law.

5. 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?**

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court recognized that the Second Amendment protects an individual right to keep and bear arms. It would be inappropriate for me as a nominee to comment on the correctness of that decision or on Justice Stevens' statements in his dissent. If confirmed, I will fully and faithfully apply all Supreme Court precedents, including *Heller*.

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

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court noted that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-627.

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

I do not think it is appropriate for me as a judicial nominee to comment on whether a Supreme Court's decision followed the Court's earlier precedent. If confirmed, I will fully and faithfully apply all Supreme Court precedents, including *Heller*.

6. 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?**

In *Citizens United v. FEC*, 558 U.S. 310 (2010), the Supreme Court held that First Amendment protections extends to corporations. It would be inappropriate for me under the Code of Conduct for United States Judges to provide additional comments to this question. See Code of Conduct for United States Judges 2(A), 3(A)(6).

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

Please see response to 8a.

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

In *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014), the Supreme Court held that corporations are entitled to protections under the Religious Freedom and Restoration Act of 1993. If confirmed, I will fully and faithfully apply Supreme Court precedent, including *Hobby Lobby*.

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

The rights to equal protection of the laws and free exercise of religion are guaranteed by the Constitution. As a district court nominee, it would be inappropriate for me to express my views on this issue under Canons 2(A) and 3(A)(6) of the Code of Conduct for United States Judges.

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

In *Loving v. Virginia*, 388 U.S. 1 (1967), the Supreme Court held that the freedom to marry is a fundamental right and state laws prohibiting interracial marriage violate the Equal Protection Clause of the Fourteenth Amendment. If confirmed, I will fully and faithfully apply all Supreme Court precedent, including *Loving*.

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

Please see my response to 8.

10. You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 2018. The Federalist Society’s “About Us” webpage explains the purpose of the organization as follows: “Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law.” It says that the Federalist Society seeks to “reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community.”

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

I am not familiar with the quoted language and cannot speak to the meaning of the language as those are not my words.

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

Please see response to 10a.

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

Please see response to 10a.

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

No.

**e. Was it at any time communicated to you that membership in the Federalist Society would make your judicial nomination more likely? If so, who communicated it to you and in what context?**

No.

**f. When you joined the Federalist Society in 2018—10 years after you began practicing law—did you believe it would help your chances of being nominated**

**to a position within the federal judiciary or within the Trump Administration?  
Please answer either “yes” or “no.”**

No.

**1. If your answer is “no,” then why did you decide to join the Federalist Society in 2018, 10 years after you began practicing law?**

I joined the Federalist Society, along with the American Inns of Court (Charles L. Clark Chapter), and the Federal Bar Association (Mississippi Chapter), during 2017-2018. I joined these organizations for networking and continuing legal education opportunities.

11. In January 2020, the Committee on Codes of Conduct of the U.S. Judicial Conference circulated a draft ethics opinion which stated that “membership in the ACS or the Federalist Society is inconsistent with obligations imposed by the Code [of Judicial Conduct].” (*Draft Ethics Opinion No. 117: Judges’ Involvement With the American Constitution Society, the Federalist Society, and the American Bar Association* (Jan. 2020))

**a. Were you aware of this ethics opinion? If so, did you consider relinquishing your membership when you were nominated for this position? If not, why not?**

I am aware of this withdrawn draft ethics opinion. If confirmed, I will adhere to the Code of Conduct for United States Judges and ethics opinions regarding my membership in any legal organizations, including the Federalist Society.

**b. If confirmed to the District Court, will you relinquish your membership in the Federalist Society? If not, how do you reconcile membership in the Federalist Society with Canon 4 of the Code of Judicial Conduct?**

If confirmed, I will adhere to the Code of Conduct for United States Judges and ethics opinions regarding my membership in any legal organizations, including the Federalist Society.

12. 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?**

No.

- 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?**

No.

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

As a judicial nominee, I do not think it is appropriate for me to provide my personal views on any area of the law. If confirmed, I will fully and faithfully apply all Supreme Court and Fifth Circuit precedents concerning administrative law.

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

I have not studied this issue. As a judicial nominee, I do not think it is appropriate for me to comment on political issues, especially one that may be the subject of pending or impending litigation. *See* Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), 5.

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

If confirmed, I will follow Supreme Court has instructed that the use of legislative history is appropriate to assist in statutory interpretation when the statute is ambiguous. *See Exxon Mobil Corp. v. Allapattach Servs., Inc.* 545 U.S. 546, 568 (2005).

15. 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.

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

I received these questions on Wednesday, September 16, 2020, from the Department of Justice’s Office of Legal Policy. I reviewed some of the materials referenced in the questions, consulted relevant case law, and prepared draft responses. The Office of Legal Policy provided comments on my draft responses, and I considered those comments in finalizing my responses. The responses are my own.

**Nomination of Kristi Haskins Johnson  
to the United States District Court for the Southern District of Mississippi  
Questions for the Record  
Submitted September 16, 2020**

**QUESTIONS FROM SENATOR WHITEHOUSE**

1. 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 have now read the Washington Post story and listened to the recording reference above.

- 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.

I am not personally aware of anonymous or opaque spending related to judicial nominations. As a judicial nominee, it would be inappropriate for me to comment on political matters related to the selection and confirmation of federal judges. *See* Code of Conduct for United States Judges, Canon 5.

- 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?

As a judicial nominee, it would be inappropriate for me to comment on political matters related to the selection and confirmation of federal judges. *See* Code of Conduct for United States Judges, Canon 5.

- 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.

No.

- 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 1c.

2. 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?

Yes, I agree with Chief Justice Roberts’ metaphor. A district judge’s role is to fairly and impartially apply the law passed by Congress or established by the Supreme Court or Circuit Court precedents.

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

A judge’s decision-making process should be based solely on the facts and law relevant to the case.

3. 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?

The Supreme Court has held that the standard for determining whether a “genuine issue” of material fact exists for trial is an objective standard. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252 (1986).

4. 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?

Empathy is an important human quality that hopefully most judges possess. Empathy, however, does not replace a judge’s obligation to follow the law regardless of the outcome the law requires.

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

All judges bring their own personal life experiences to the bench. Those experiences, however, should not influence the decision-making process. Judges should resolve cases based on the law.

5. 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.

6. 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?

Juries play a critical role in our justice system, and the Seventh Amendment specifically preserves “the right of trial by jury” in suits at common law. If confirmed, I will fully and faithfully apply all Supreme Court and Fifth Circuit precedent to safeguard this Seventh Amendment right.

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

As this matter may be the subject of pending or impending litigation, it would be inappropriate for me to comment pursuant to the Code of Judicial Conduct for United States Judges, Canon 3(A)(6).

- 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 6b.

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

The United States Supreme Court has instructed that the use of legislative history is appropriate to assist in statutory interpretation when the statute is ambiguous. *See Exxon Mobil Corp. v. Allapattach Servs., Inc.*, 545 U.S. 546, 568 (2005). If confirmed, I will fully and faithfully apply all Supreme Court and Fifth Circuit precedent related to what deference is owed to congressional fact-finding.

8. 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.

If confirmed, I will adhere to the Code of Conduct for United States Judges and consider all advisory opinions from the Committee on the Code of Conduct. Advisory Opinion #116 lays out factors for judges to consider when deciding whether to attend seminars or conferences. I will carefully consider those factors before attending any seminar or conference.

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

Please see my response to 8bi.

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

Please see my response to 8bi.

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

Please see my response to 8bi.

- 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 8bi.

- 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 8bi.

- 9. Earlier this year, the Federal Judiciary's Committee on the Codes of Conduct drafted a proposed advisory opinion concluding that a judge's ongoing "membership in . . . the Federalist Society is inconsistent with obligations imposed by the Code [of Conduct.]" After an aggressive lobbying campaign by Federalist Society-affiliated judges, the Committee ultimately voted to table the proposed opinion. In doing so, the Committee observed: "The nation depends on a judiciary that is impartial and independent. Consistent with the judge's oath, each individual judge should take care to make all membership decisions in a way that is consistent with the highest ideals of the profession as expressed in the Code of Conduct." (emphasis added.)

- a. If confirmed, do you plan to continue your membership in the Federalist Society?

If confirmed, I will ensure my membership and participation in any organization complies with the Code of Conduct for United States Judges.

- b. In the draft of Advisory Opinion #117, the Committee concluded that official affiliation with ACS or the Federalist Society "could convey to a reasonable person that the affiliated judge endorses the views and particular ideological perspectives advocated by the organization; call into question the affiliated judge's impartiality on subjects as to which the organization has taken a position; and generally frustrates the public's trust in the integrity and independence of the judiciary."

- i. Do you think the Federalist Society is an organization "that serves the interests generally of those who use the legal system, rather than the interest of any specific constituency"? Why or why not?

As a judicial nominee, it is not appropriate for me to comment on this matter that has been the subject of much political debate. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

- ii. Do you think the Federalist Society “is generally viewed by the public as having adopted a consistent political or ideological point of view equivalent to the type of partisanship often found in political organizations”? Why or why not?

Please see response to 9bi.

- iii. Do you believe that a judge’s membership in the Federalist Society may reasonably be seen by the public as engendering indirect advocacy of the organization’s political, social, or civic objectives? Why or why not?

Please see response to 9bi.

- iv. Do you believe that reasonable members of the public would perceive a judge who has membership in the Federalist Society, a self-described group of conservatives and libertarians, to be partial or impartial? Why?

Please see response to 9bi.

- v. The draft opinion notes “the Federalist Society’s funding comes substantially from sources that support conservative political causes.” Do you believe that membership in an organization tied to such funding could give rise to the appearance of impropriety or partiality? Why or why not?

Please see response to 9bi.

**Nominations**  
**Hearing before the Senate Committee on the Judiciary**  
**Questions for the Record**  
**September 9, 2020**

**QUESTIONS FROM SENATOR BLUMENTHAL**

**Questions for Ms. Kristi Haskins Johnson**

- 1. Please describe whether you believe *Brown v. Board of Education* was correctly decided.**

Although the general rule is that a nominee should not give a thumbs up or down on the correctness of a United States Supreme Court case, *Brown v. Board of Education* warrants a deviation from the general rule given its historical significance. *Brown*, which corrected a grave injustice caused by *Plessy v. Ferguson*, was correctly decided.

**Questions for the Record for Kristi Johnson**  
**From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee to ensure the fitness of nominees for a lifetime appointment to the federal bench, I ask each nominee to answer the following two questions:

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

No.

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

No.

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

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

Yes.

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

I have not.

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

If confirmed, I will participate in training opportunities offered to federal judges on implicit bias.

3. As Mississippi's Solicitor General, your duties include supervising "particularly important or complicated civil litigation in federal district court and Mississippi appellate courts." You also supervise civil and criminal appeals in the U.S. Supreme Court, Fifth Circuit, and Mississippi Supreme Court.

**a. How are these "particularly important or complicated civil litigation" cases selected? Do you select these cases on your own or do you get input or direction from others?**

The Mississippi Attorney General, as the democratically-elected officer for the State of Mississippi, decides which cases will be handled by the Solicitor General division.

- b. As an example, Mississippi has intervened in *California v. Wheeler*, in support of EPA’s new rule that diminishes protections under the Clean Water Act. I understand you lead Mississippi’s intervenor effort. Are you the one who brought this to the state’s attention? How did Mississippi’s involvement in the case come about?**

The Mississippi Attorney General’s Office was contacted by attorneys from the Georgia Attorney General’s Office who invited Mississippi to intervene in *California v. Wheeler* along with twenty-two other states. The Mississippi Attorney General, as the democratically-elected officer for the State of Mississippi, made the decision to intervene in the case.

4. In April, Mississippi Governor Tate Reeves issued an Executive Order postponing all surgeries and procedures that are not immediately medically necessary. When asked to clarify whether this includes abortion, a constitutionally protected right, Governor Tate replied, “[i]t shuts down all elective surgeries.” This order eventually expired only to later be replaced by a similar prohibition issued by the Mississippi Department of Health.

- a. Are you aware of whether this Executive Order or the order by the Mississippi Department of Health was intended to restrict a woman’s access to an abortion?**

I believe you are referring to Governor Tate Reeves’ Executive Order 1470. Following the Governor Reeves’ Proclamation declaring a State of Emergency existed in the State of Mississippi as a result of the COVID-19 pandemic, Governor Reeves issued a series of executive orders to deal with the public health emergency. The Executive Order you referenced “postpone[d] all surgeries and procedures that [were] not immediately medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient’s physician.” This order applied to all surgeries and procedures, and according to the order, was intended to “conserve critical healthcare resources such as ventilators, medical equipment and PPE, and to limit exposure of patients and medical personnel to COVID-19[.]”

- b. If there was a challenge to either order because it restricted a woman’s right to choose, would this case have risen to the level of “particularly important or complicated civil litigation” that would be in your purview?**

Please see my response to 3a.

**Nomination of Kristi Haskins Johnson**  
**United States District Court for the Southern District of Mississippi**  
**Questions for the Record**  
**Submitted September 16, 2020**

**QUESTIONS FROM SENATOR BOOKER**

1. As Solicitor General for the State of Mississippi, you intervened in *California v. Wheeler* in support of the Environmental Protection Agency’s new Clean Water Act Rule that would loosen restrictions on how much pollution can be discharged into small wetlands and streams.<sup>1</sup> Please explain why it is in the best interest of Mississippi’s residents to ease restrictions on how much pollution can be discharged into small wetlands and streams?

The State of Mississippi, along with twenty-two other states, intervened in *California v. Wheeler* in support of the EPA’s new Clean Water Act Rule. The Mississippi Attorney General, as the democratically-elected officer for the State of Mississippi, made the decision to join the State of Georgia to intervene in the case. The Intervening States argued that the 2015 rule encroached on States’ authority to regulate their water resources by expanding the definition of “waters of the United States” without statutory or constitutional justification. *See, e.g., Hodel v. Va. Surface Mining & Reclamation Ass’n Inc.*, 452 U.S. 264, 286-87 (1981) (explaining that a federal rule violates States’ Tenth Amendment powers when it addresses matters that are indisputably attributes of state sovereignty, and when compliance with the rule would directly impair States’ ability to structure integral operations). The new Rule, according to the Intervenor States, better respects States’ traditional regulatory authority over intrastate lands and waters.

2. The State of Mississippi is currently engaged in litigation defending the sentencing of Brett Jones to life-without-parole for a murder he committed when he was 15-years-old.<sup>2</sup> Your office is pursuing this case despite the fact that the Supreme Court held in *Miller v. Alabama* that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment.<sup>3</sup> As the Supreme Court said in *Miller*, “[C]hildren are constitutionally different from adults for the purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform . . . ‘they are less deserving of the most severe punishments.’”<sup>4</sup>

Former Republican Senator Alan Simpson, himself a juvenile offender, agrees with the Court in *Miller* and supports ending life without parole for juveniles.<sup>5</sup> He wrote in an op-ed, “[E]very child convicted of a serious crime that receives a lengthy prison sentence, including a life sentence, should be given the opportunity to demonstrate later in life that he or she has been rehabilitated and is deserving of a second chance.”<sup>6</sup>

---

<sup>1</sup> State Intervenors’ Motion to Intervene, *California v. Wheeler*, No. 3:20-cv-3005-RS (N.D. Cal. Jun. 1, 2020).

<sup>2</sup> *See, e.g.*, Brief for the Respondent, *Jones v. Mississippi*, No. 18-1259, 2020 WL 4819955 (U.S. Aug. 14, 2020)

<sup>3</sup> 567 U.S.460 (2012).

<sup>4</sup> *Id.* at 471.

<sup>5</sup> Alan Simpson, *Congress should ban life without parole sentences for children*, THE HILL (Nov. 15, 2018), <https://thehill.com/blogs/congress-blog/judicial/417009-congress-should-ban-life-without-parole-sentences-for-children>.

<sup>6</sup> *Id.*



Why is your office currently advocating for Jones to receive a sentence of life without parole in light of *Miller v. Alabama*?

*Miller v. Alabama*, 567 U.S. 460 (2012), held that mandatory life-without-parole sentencing schemes are unconstitutional as applied to juveniles. Four years later, the Supreme Court applied the constitutional prohibition on mandatory life-without-parole sentences announced in *Miller* retroactive to cases on collateral review. *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). Because such mandatory sentences pose too great a risk of disproportionate punishment, the Eighth Amendment requires consideration of “youth and its attendant characteristics” before a juvenile may be sentenced to life without parole, but there is no “formal factfinding requirement.” *Montgomery*, 136 S. Ct. at 735 (quoting *Miller*, 567 U.S. at 465). The question presented in the *Brett Jones* case currently pending before the United States Supreme Court is: Does a life-without-parole sentence imposed under a discretionary sentencing scheme where the sentence considers youth and its attendant characteristics violate the Eighth Amendment if the sentencer does not make an express, on-the-record finding that a juvenile is permanently incorrigible?

The State of Mississippi asserts that there is no requirement to make a finding of incorrigibility because “permanent incorrigibility” is not the substantive Eighth Amendment standard for juvenile life-without-parole sentences. Instead, the Eighth Amendment requires an individualized sentencing hearing where a sentencer considers youth and its attendant characteristics before imposing a life-without-parole sentence on a juvenile homicide offender. Because the State of Mississippi contends that Jones received precisely what the Eighth Amendment requires, the State concludes that the lower court was correct in affirming his sentence and should be affirmed.

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

My understanding of originalism is that a constitutional or statutory provision should be interpreted according to the plain text giving the words their original public meaning at the time the Constitution was framed, the Amendment enacted, or the statute passed. Although I prefer not to label my judicial philosophy having never served as a judge, the Supreme Court has provided guidance for how lower courts should approach matters of statutory or constitutional interpretation. I will fully and fully apply all Supreme Court and Fifth Circuit precedent.

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

My understanding of textualism is that in constitution or statutory interpretation the text is paramount, and the constitution or statutory provisions should be interpreted according to the plain text. Although I prefer not to label my judicial philosophy having never served as a judge, the Supreme Court has provided guidance for how lower courts should approach matters of statutory or constitutional interpretation. I will fully and fully apply all Supreme Court and Fifth Circuit precedent.

5. 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?

Yes. If confirmed, I will follow United States Supreme Court and Fifth Circuit precedents to determine the meaning of statutes. The United States Supreme Court has instructed that the use of legislative history is appropriate to assist in statutory interpretation when the statute is ambiguous. *See Exxon Mobil Corp. v. Allapattach Servs., Inc.* 545 U.S. 546, 568 (2005).

- 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 response to 5a.

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

Yes, I believe judicial restraint is an important value for appellate and district judges to follow. I understand that judicial restraint is when a judge resolves cases by applying the law as written and follows binding precedent without interjecting personal views or policy preferences into the decision-making process.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.<sup>7</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it would be inappropriate for me to comment on *Heller*. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will fully and faithfully apply *Heller* and all other Supreme Court and Fifth Circuit precedents.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>8</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it would be inappropriate for me to comment on *Citizens United v. FEC*. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will fully and faithfully apply *Citizens United v. FEC* and all other Supreme Court and Fifth Circuit precedents.

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the

---

<sup>7</sup> 554 U.S. 570 (2008).

<sup>8</sup> 558 U.S. 310 (2010).

Voting Rights Act.<sup>9</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it would be inappropriate for me to comment on *Shelby County v. Holder*. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will fully and faithfully apply *Shelby County v. Holder* and all other Supreme Court and Fifth Circuit precedents.

7. 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.<sup>10</sup> 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.<sup>11</sup>

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

I understand that cases involving alleged voter fraud are and could be litigated in federal court, and therefore, it would be inappropriate as a judicial nominee for me to comment. See Code of Conduct for United States Judges, Canon 3(A)(6) (“A judge should not make any public comment on the merits of a matter pending or impending in any court.”)

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

Please see response to 7a.

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

Please see response to 7a.

8. 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.<sup>12</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>13</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more

---

<sup>9</sup> 570 U.S. 529 (2013).

<sup>10</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>11</sup> *Id.*

<sup>12</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

<sup>13</sup> *Id.*

likely than whites to be incarcerated in state prisons.<sup>14</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>15</sup>

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

Yes.

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

Yes.

- 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.

I have not studied the issue of implicit racial bias in our criminal justice system.

- 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.<sup>16</sup> Why do you think that is the case?

I am not familiar with that report and therefore cannot comment as to the reasons for the disparity.

- 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.<sup>17</sup> Why do you think that is the case?

I am not familiar with that academic study and therefore cannot comment as to the reasons for the disparity.

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

I think the combination of both implicit racial bias awareness and training will help address the issue of implicit racial bias in our criminal justice system.

9. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>18</sup> In the 10 states that saw

---

<sup>14</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>15</sup> *Id.*

<sup>16</sup> U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

<sup>17</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

<sup>18</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016),

the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>19</sup>

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I am not familiar with the fact sheet you cite in your question and cannot provide an opinion on the issue.

- 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 response to 9a.

10. 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.

11. 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.

12. Do you believe that *Brown v. Board of Education*<sup>20</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Although the general rule is that a nominee should not give a thumbs up or down on the correctness of a United States Supreme Court case, Canons 2(A) and 3(A)(6) of the Code of Conduct for United States Judges, *Brown v. Board of Education* warrants a deviation from the general rule given its historical significance. *Brown*, which corrected a grave injustice caused by *Plessy v. Ferguson*, was correctly decided.

13. Do you believe that *Plessy v. Ferguson*<sup>21</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No. The United States Supreme Court overturned *Plessy v. Ferguson* in *Brown v. Board of Education*.

14. 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?

---

<http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

<sup>19</sup> *Id.*

<sup>20</sup> 347 U.S. 483 (1954).

<sup>21</sup> 163 U.S. 537 (1896).

No.

15. 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.”<sup>22</sup> Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

My understanding is that recusal determinations are made by the presiding judge on a case-by-case basis and governed by 28 U.S.C. § 455 and the Code of Conduct for United States Judges. As a judicial nominee, it would be inappropriate for me to comment on matters that are the subject of political debate or any issues that could be pending or impending in litigation. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5.

16. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”<sup>23</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) held that “once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693. If confirmed, I will fully and faithfully apply all Supreme Court and Fifth Circuit precedent.

---

<sup>22</sup> 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>.

<sup>23</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

**Questions for the Record from Senator Kamala D. Harris**  
**Submitted September 16, 2020**  
**For the Nomination of:**

**Kristi Haskins Johnson, to be United States District Judge for the Southern District of Mississippi**

1. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

- a. **What is the process you would follow before you sentenced a defendant?**

In sentencing a defendant, I would consult all applicable Supreme Court and Fifth Circuit precedent as well as applicable federal statutes. I would consult the United States Sentencing Guidelines and perform the required Guidelines calculation. I would review the entire record, including the Presentence Report, the submissions of the parties, including any submissions on mitigation and character information, and victim impact statements. I also would consider all factors in 18 U.S.C. § 3553(a) and be mindful to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in” Section 3553(a).

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

I would follow the steps described in my response at 1a.

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

The Sentencing Guidelines describe circumstances that may justify and upward or downward departure from the Guidelines. I will fully and faithfully apply Supreme Court and Fifth Circuit precedent to determine when it is appropriate to depart from the advisory Sentencing Guidelines.

- d. Judge Danny Reeves of the Eastern District of Kentucky—who also serves on the U.S. Sentencing Commission—has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.<sup>1</sup>

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

I have not studied this issue. However, it is within Congress’s purview to establish mandatory minimum sentences for certain federal crimes. If confirmed, I will fully and faithfully apply all mandatory minimums

---

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

established by Congress. As a judicial nominee, it would be inappropriate for me to comment on congressional policy matters. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

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

Please see my response to 1di.

iii. **Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.**

Please see my response to 1di.

iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.<sup>1</sup> **If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

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

Congress has established mandatory minimum sentences for certain federal crimes. If confirmed, it would be my duty to follow the law, including the imposition of mandatory minimum sentences, provided the law does not violate the Constitution.

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

Charging decisions are within the discretion of the executive branch of government. If confirmed, I would respect the constitutional separation of powers.

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

The power to grant clemency lies with the President of the United States. If confirmed, I would respect the constitutional separation of powers.

---

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



- e. 28 U.S.C. Section 994(j) directs that alternatives to incarceration are “generally appropriate for first offenders not convicted of a violent or otherwise serious offense.” **If confirmed as a judge, would you commit to taking into account alternatives to incarceration?**

Yes.

2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

- a. **Does a judge have a role in ensuring that our justice system is a fair and equitable one?**

Yes.

- b. **Do you believe there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

I am aware that the rate of incarceration is higher for African-American men than white men. If confirmed, I commit to treating everyone equally and with dignity and respect regardless of their race, ethnicity, or background.

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. I will commit to ensuring that all individuals, including qualified minorities and women, are given serious consideration for such positions.

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

**Kristi Haskins Johnson**  
**Nominee, U.S. District Court for the Southern District of Mississippi**

- 1. Under Supreme Court and U.S. Court of Appeals for the Fifth Circuit precedent, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment’s prohibition on cruel and unusual punishment?**

In the Fifth Circuit, to successfully challenge the State’s method of execution under the Eighth Amendment, the plaintiff must show that the method of execution “presents a risk that is *sure or very likely* to cause serious illness and needless suffering, and give rise to sufficiently *imminent dangers*.” *Whitaker v. Collier*, 862 F.3d 490, 497 (5th Cir. 2017) (quoting *Glossip v. Gross*, 576 U.S. 863 (2015)). “[T]here must be a substantial risk of serious harm, an objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment.” *Id.* The plaintiff also “must identify an alternative that is ‘feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain.’” *Id.*

- 2. Under the Supreme Court’s holding in *Glossip v. Gross*, is a petitioner required to establish the availability of a “known and available alternative method” that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

Yes.

- 3. Have the Supreme Court or the U.S. Court of Appeals for the Fifth Circuit ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

No, neither the Supreme Court nor the Fifth Circuit has recognized a constitutional right to post-conviction DNA analysis for habeas corpus petitioners in order to prove their actual innocence of their convicted crimes.

- 4. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

No.

5.

- a. **Under Supreme Court and U.S. Court of Appeals for the Fifth Circuit precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

In *Employment Division v. Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 879 (1990), the Supreme Court held that the Free Exercise Clause does not exempt an individual from complying with a law that places an incidental burden on religious exercise so long as that law is facially neutral and generally applicable. If the state action targets religious conduct, though, the state action is subject to strict scrutiny. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-534 (1993). The burden on religion “must be justified by a compelling governmental interest,” and the law “must be narrowly tailored to advance that interest.” *Id.* at 531–532. The Fifth Circuit recently reaffirmed “laws that burden religion while exempting the non-religious must pass strict scrutiny.” *Spell v. Edwards*, 962 F.3d 175, 181 (5th Cir. 2020) (Ho., J. concurring in judgment) (relying on *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993)).

- b. **Under Supreme Court and U.S. Court of Appeals for the Fifth Circuit precedent, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.**

The Supreme Court and the Fifth Circuit have held a state law that discriminates against a religious group or religious belief must survive strict scrutiny. See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2024 (2017); *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246, 2260 (2020); *Spell v. Edwards*, 962 F.3d 175, 181 (5th Cir. 2020).

- c. **What is the standard in the U.S. Court of Appeals for the Fifth Circuit for evaluating whether a person’s religious belief is held sincerely?**

Because the sincerity of a religious belief is not often challenged, the Fifth Circuit has had few opportunities to conduct an inquiry into the sincerity of a religious belief. See *McAlister v. Livingston*, 348 F. App’x 923, 935 (5th Cir. 2009) (per curiam). Indeed, “[s]incerity is generally presumed or easily established.” *Moussazadeh v. Texas Dept. of Criminal Justice*, 703 F.3d 781, 791 (5th Cir. 2012). Claims of sincerely-held religious beliefs have been accepted based on “little more than the plaintiff’s credible assertions.” *Tagore v. United States*, 735 F.3d 324, 328 (5th Cir. 2013).

6. **What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*?**

The Supreme Court recognized in *District of Columbia v. Heller*, 554 U.S. 570 (2008) that the Second Amendment protects an individual right to possess a firearm for traditionally lawful purposes, including self defense at home.

7. **Please state whether you agree or disagree with the following statement and explain why: “Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English would have understood the words to mean, in their context, at the time they were enacted.”**

Yes, I agree with that statement. If confirmed, I will fully and faithfully apply Supreme Court and Fifth Circuit precedent regarding statutory interpretation.