

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

QUESTIONS FROM SENATOR BLUMENTHAL

Questions for Judge Stephen P. McGlynn

- 1. As stated in your Senate Judiciary Questionnaire, you served as the Chairman of the 2004 Illinois Republican Party platform’s “Platform & Resolution Committee.”¹**
 - a. The platform stated that the Party believed in the need “to protect the fundamental right to life and dignity of every human life including the lives of unborn children.”²**
 - i. Please state whether this statement reflects your personal views.**

This document was a political document of a political party and was not my personal statement on any issue. My own political opinions are irrelevant to my duties as a judge.

- ii. Please explain your role in the drafting and approval of this language. If you did not play a role in drafting and approving this language, please describe your role on the Committee.**

The Illinois Republican Platform of 2004 is a political document. It was created by a committee and ratified by delegates at a convention. As Chairman of the Platform Committee, I solicited and accepted suggestions, planks, ideas and proposed language from Republican Office holders, the leadership of the Illinois House, the leadership of the Illinois Senate and the Congressional delegation. I also accepted such input from the members of the Committee, the County Chairman and members of the State Central Committee.

My job was to collect all of these proposals and suggestions, and then try to put them all in the same format so that they could be evaluated, amended and voted upon. I did organize the various suggestions and ideas in the format that it ultimately appears. I also synthesized similar and redundant suggestions and ideas into the format in which it appears. As Chairman of the Committee, I was not to vote on any plank, motion or resolution unless to break a tie. There were no tie votes. Once the Platform Committee voted on the various language, planks and amendments, my law office revised the text and put it in final form. The Committee as a whole concluded that the final version reflected the Party’s position on the issues of the day.

¹ Senate Judiciary Questionnaire, at p. 7.

² *The 2004 Platform of the Illinois Republican Party*, ILLINOIS REPUBLICAN PARTY (May 15, 2004), p. 2 [see Senate Judiciary Questionnaire Attachments 12(b) at p. 22].

- b. The platform also stated, “The paramount right of an individual is the right to life. From the first beat of a heart to the last breath drawn, we recognize each individual’s dignity and worth.”**

- i. Please state whether this statement reflects your personal views.**

The document was not intended to reflect my personal views. It would be improper for me to state my personal views as a person seeking appointment to the federal bench.

- ii. Please explain your role in the drafting and approval of this language. If you did not play a role in drafting and approving this language, please describe your role on the Committee.**

See my answer to 1(a).

- c. The platform further stated, “Government is obligated by law and by deed, to protect and defend each individual’s right to life, not only from government action, but also against a threat from another. The right to life is of such primacy that no government entity nor any person shall be allowed to take another’s life without due process of law and only under the most compelling and grave circumstances. Government must defend and protect those who by age, disability or other affliction cannot protect themselves. This includes the protection of the unborn child.”**

- i. Please state whether this statement reflects your personal views.**

The Platform was a political document not intended to reflect my personal views. It would be improper for me to state my personal views as a person seeking appointment to the federal bench.

- ii. Please explain your role in the drafting and approval of this language. If you did not play a role in drafting and approving this language, please describe your role on the Committee.**

Please see my answer to 1(a).

2. With respect to *Roe v. Wade*—

- a. Please state whether you believe *Roe v. Wade* is settled or established precedent.**

Yes.

- b. Please explain—**

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

Roe is binding precedent on all state and federal courts.

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

Roe speaks for itself.

3. **In a 2016 television interview, you stated that the Affordable Care Act is a “bad law” and that it has “very serious problems.” In the same interview, you stated that the Supreme Court decision that upheld the Affordable Care Act constituted “a full-frontal assault on people’s religious liberties.”³**

- a. **Please state whether—**

- i. **it is still your personal view that the Affordable Care Act is a “bad law.”**

While my personal opinions are irrelevant to my duties as a Judge, I appreciate the opportunity to clear up any misunderstanding as to my comments regarding ACA. I did not express the view that ACA was bad law. The interview in question was conducted ten days after Justice Antonin Scalia passed away. I was asked to appear on that show to discuss in passing, some of his decisions and his judicial philosophy. I remained neutral during that entire interview with respect to the ACA and *Sebelius*. My comments were all designed to explain the positions of various sides to the dispute of ACA and the rulings and philosophy of Justice Scalia.

- ii. **it is still your personal view that the Affordable Care Act has “very serious problems.”**

I did not personally express that view. Please see my answer to 3(a)(i).

4.

- i. **when you stated that the Supreme Court decision that upheld the Affordable Care Act constituted “a full-frontal assault on people’s religious liberties,” you were referring to *NFIB v. Sebelius*. If not, please state the decision to which you were referring.**

Thank you for the opportunity to clear up any misunderstanding regarding my comments in the February 23, 2016 interview. See my answer to 1(a)(i). I did not express the opinion that ACA was an assault on religious liberties. In fact, I remained personally neutral on that issue. I was merely pointing out that opponents of ACA made that claim. I will fully and faithfully follow *NFIB v. Sebelius*, and apply any precedent of the Supreme Court and of the Seventh Circuit on this matter.

³ Lee Presser, *A Conversation with Judge Steve McGlynn*, YOUTUBE (Feb. 23, 2016), <https://www.youtube.com/watch?v=rGrFDFCWpSM>.

- ii. **it is still your view that the aforementioned Supreme Court decision constituted “a full-frontal assault on people’s religious liberties.”**

My personal opinion is irrelevant. I will fully and faithfully follow *NFIB v Sebelius* and apply any precedent of the Supreme Court and the Seventh Circuit on this matter.

5.

- a. **If you believe that it is not appropriate for you to state your personal views on the Affordable Care Act due to your pending nomination to the District Court for the Southern District of Illinois, please explain why it was appropriate for you to have made the aforementioned comments as a sitting judge.**

I have reviewed the interview in question and believe I did not express an opinion on the ACA and remained neutral as to it and the cases ruling upon it.

- b. **Please state whether *NFIB v. Sebelius* is settled or established precedent. If so—**

- i. **please identify on which courts *NFIB v. Sebelius* is binding and on which court(s) it is not.**

Yes, it is binding on all courts, State and Federal.

- ii. **please explain whether *NFIB v. Sebelius* is binding on the specific issue of whether the individual mandate is severable from any part or the entire remainder of the Affordable Care Act? Note: This question is not asking you to opine or comment on whether the individual mandate is severable from any part or the entire remainder of the Affordable Care Act, but rather what settled or established precedent says on this specific issue under existing precedent.**

Sebelius speaks for itself. I believe it would be improper for me to respond to these two subparts to the question as they relate to matters that are presently pending or impending before the federal courts. I will fully and faithfully apply it and all related precedents of the Supreme Court and Seventh Circuit.

- **If so, in what way is *NFIB v. Sebelius* binding on the specific issue of whether the individual mandate is severable from any part or the entire remainder of the Affordable Care Act?**
- **If not, is it your testimony that *NFIB v. Sebelius* does not control on the question of whether the individual mandate is severable from any part or the entire remainder of the Affordable Care Act?**

Sebelius speaks for itself. I believe it would be improper for me to respond to these two subparts to the question as they relate to matters that are presently pending or impending before the federal courts.

c. Have you ever argued, advised, suggested, recommended, or proposed—

i. that the individual mandate is unconstitutional?

Not that I recall.

ii. that the individual mandate is central to provisions in the Affordable Care Act, including those guaranteeing coverage for pre-existing conditions and expanding Medicaid coverage to needy people?

Not that I recall.

iii. that if the individual mandate is unconstitutional, that it is nonseverable from the remaining provisions of the Affordable Care Act or any subset of remaining provisions of the Affordable Care Act?

I have not argued, advised, suggested, recommended or proposed that the remaining portions of the ACA fail if the individual mandate were to be held unconstitutional.

6. In your Senate Judiciary Questionnaire, you explained that you are a former Republican Party leader and three-time candidate for judicial office. You also stated that you had made over 90 speeches or talks at events sponsored by the Republican Party.

a. Please explain how you plan to separate your personal views from your judicial decision-making.

I have a profound respect for the Constitution and the Rule of Law. Our system breaks down when a judge believes he or she can rule according to personal opinions or make policy reserved for the legislative branch. Or, to pick and choose which Supreme Court or Circuit Court precedent he or she will follow. When I served on the Appellate Court with Democrats and Republicans, I found it absolutely liberating that we did not consider partisan political interests in trying to answer questions of law and justice. After that time on the Appellate bench, I did not return to partisan politics. I would not demean the important service on the judiciary with partisan concerns. I have a proven record of being apolitical as a judge. As evidence, I have presided over many election law cases that pitted Republican vs. Democrat. Both sides could have exercised an absolute right to remove me as the presiding judge on the matter. Rather, they agreed to submit the dispute to me presumably believing I would fairly apply the law. I will faithfully follow the law regardless of partisan interests.

- b. Please explain how you will ensure that your past involvement in politics will not influence your role on the federal bench and what affirmative steps you will take to overcome your political biases.**

In addition to my answer to 5a, I have been very open with litigants at the beginning of cases that may have some partisan political overtones as to my history with the Republican Party and have given the parties the opportunity to consider that fact and make any further inquiries before deciding to proceed with the case before me. While Illinois rules are different from the Federal Rules, I believe my efforts at transparency at the beginning of litigation underscores my sincere efforts to assure that all parties believe that politics will not cloud my judgement nor compromise their position.