

**Nomination of Allen C. Winsor to the
U.S. District Court for the Northern District of
Florida Questions for the Record
May 30, 2018**

**QUESTIONS FROM SENATOR
FEINSTEIN**

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

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

It is never appropriate for lower courts to depart from Supreme Court precedent. It is the obligation of all lower courts to follow all Supreme Court precedent.

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

My view is that it is generally not proper for inferior court judges to criticize or question Supreme Court precedent. In very limited circumstances, it may be proper for a judge to note potential conflicts or developments that might invite further Supreme Court review or clarification.

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

In certain published decisions, the Supreme Court has articulated some of the factors it may consider in determining whether to overturn its own precedent. *See, e.g., Lawrence v. Texas*, 539 U.S. 558 (2003); *Planned Parenthood of S.E. Penn. v. Casey*, 505 U.S. 833 (1992). But it has also made clear that it is the Supreme Court's "prerogative alone to overrule one of its precedents." *State Oil Co. v. Khan*, 522 U.S. 3 (1997). It would be inappropriate for me as a lower-court nominee to opine on when the Supreme Court should or should not overturn its own precedent.

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

Please see my response to question 1c.

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

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

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

Yes. And it is the obligation of all inferior courts to apply all United States Supreme Court precedents regardless of whether they are considered “superprecedent” under the definitions listed above or otherwise.

b. Is it settled law?

Yes.

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

Yes.

4. In 2014, as Solicitor General of Florida, you defended Florida’s prohibition on same-sex marriage. (State Officials’ Motion to Dismiss and Incorporated Memorandum of Law Supporting Dismissal and Opposing Preliminary Injunction Motions, *Brenner v. Scott*, 2015 WL 44260 (N.D. Fla. Jan. 1, 2015), 2014 WL 2586671 (May 12, 2014)) That same year, you represented the state of Florida as intervenor in a lawsuit challenging Florida Atlantic University’s (FAU) decision not to extend residency benefits to students based on marriages to same-sex partners. (Answer Brief of Intervenor-Appellee State of Florida, *Dousset v.*

Florida Atlantic University, 184 So. 3d 1133 (Sept. 16, 2015), 2014 WL 7177791 (Nov. 20, 2014)) The state of Florida intervened in support of FAU in this case.

a. Please describe your role in the preparation of Florida’s briefing in these cases. Did you participate in the preparation of, supervise attorneys, or give approval for the arguments made in the briefs or at oral argument?

As Solicitor General, I was tasked with defending the laws of Florida. I was substantially involved in both the *Dousset* and *Brenner* matters. I was involved in the briefing (along with other attorneys in my office), and I approved the arguments made in the briefs. Neither case involved oral argument.

b. In *Obergefell*, the Supreme Court held that “the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.” (*Obergefell v. Hodges*, 135 S. Ct. 2584, 2599 (2015)) How is the brief you signed in *Dousset v. Florida Atlantic University* consistent with the Supreme Court’s decision in *Obergefell*?

The State submitted the brief in *Dousset* before the Supreme Court decided

Obergefell. After *Obergefell* issued, I submitted a filing in *Dousset* that said: “The *Obergefell* decision forecloses the State’s earlier arguments defending the challenged provisions.” The Florida court subsequently issued its opinion reversing the university’s decision in light of *Obergefell*. See *Dousset v. Florida Atlantic University*, 184 So. 3d 1133 (Fla. 4th DCA 2015).

- c. The brief you signed in *Brenner v. Scott* concluded that Florida’s ban on same-sex marriage was appropriate because Florida’s marriage law had “a close, direct, and rational relationship to society’s legitimate interest in increasing the likelihood that children will be born to and raised by the mothers and fathers who produced them in stable and enduring family units.” **What evidence supports your argument that married same-sex couples would have a decreased likelihood of providing “stable and enduring family units” for their children?**

The excerpt quoted above was from a portion of the brief arguing that the rational-basis test applied and that the challenged law satisfied that standard. See pages 16-24. The argument, therefore, did not turn on evidence, and no evidence was submitted in support. Instead, the brief argued the following:

Rational-basis review is not about “the wisdom, fairness, or logic of legislative choices.” The question is simply whether the challenged legislation is rationally related to a legitimate state interest. Under this deferential standard, a legislative classification “is accorded a strong presumption of validity,” and “must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” This holds true “even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous.” Moreover, a State has “no obligation to produce evidence to sustain the rationality of a statutory classification.” Rather, “the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record.” (Brief at 17) (citations omitted).

5. In 2014, as Solicitor General of Florida, you represented the state of Florida before the United States Supreme Court in *Hall v. Florida*, 134 S. Ct. 1986 (2014). At issue in *Hall* was a Florida statute which prohibited further exploration of intellectual disability, including for purposes of imposing the death penalty, where a defendant was deemed to have an IQ greater than 70. The Supreme Court held that the statute violated the Eighth and Fourteenth Amendments. **Please describe your role in defending this case. Did you participate in the preparation of, supervise attorneys, or give approval for the arguments made in briefs or at oral argument?**

In my role as Solicitor General, I was the lead attorney on this matter at the United States Supreme Court. I led the briefing efforts and approved the arguments presented. I presented the oral argument on behalf of the State.

6. In 2013, as Solicitor General of Florida, you defended Florida’s Firearm Owners Privacy Act, which prohibited doctors from asking patients about gun ownership or making notes in patient medical records about such discussions unless “medically necessary.” (*Wollschlaeger v. Governor of Florida*, 760 F.3d 1195 (11th Cir. 2014))

a. Please describe your role in defending Florida’s Firearm Owners Privacy Act in *Wollschlaeger v. Governor of Florida*.

This appeal was pending more than four years. It began before I became Solicitor General, and it continued after I was no longer Solicitor General. I was the lead attorney when I served as Solicitor General. I was not involved in the preparation and filing of the initial briefs, which were submitted in 2012 before I became Solicitor General. After those briefs were filed, the Eleventh Circuit scheduled oral argument, and I presented that argument in July 2013. Later in 2014 and 2015, I submitted one or more notices of supplemental authority or responses to notices of supplemental authority. In 2015, the Eleventh Circuit requested supplemental memoranda on a narrow question, and I led the State’s effort to prepare and file the memoranda. Subsequently, in 2016, the Eleventh Circuit granted en banc review, which led to additional en banc briefing and an en banc oral argument. I was not involved in the en banc briefing or argument, which took place after I left the office.

b. Did you participate in the preparation of any briefs in *Wollschlaeger v. Governor of Florida*? If so, did you select which arguments would be included in the briefs the state of Florida filed in this case?

Please see my response to question 6a.

c. Did you participate in any oral arguments in *Wollschlaeger v. Governor of Florida*? If so, which parts of the case did you argue?

Please see my response to question 6a.

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

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

As a nominee to an inferior federal court, it would be inappropriate for me to comment on the merits of Justice Steven’s dissent. It would likewise be inappropriate for me to comment on the merits of the majority opinion.

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

The majority opinion stated 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.” *District of Columbia v. Heller*, 554 U.S. 570 (2008). The majority opinion also said that “the right secured by the Second Amendment is not unlimited.” *Id.* And it said that “[t]he Constitution leaves the District of Columbia a variety of tools for combating that problem [of handgun violence], including some measures regulating handguns.” *Id.*

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

I have not studied all of the pre-*Heller* Supreme Court precedents, but I note that the majority in *Heller* said that “this case represents this Court’s first in-depth examination of the Second Amendment.” As a nominee to an inferior federal court, it would be inappropriate for me to comment further.

8. While serving as Solicitor General of Florida, did you ever conceive of, recommend, or advocate for a particular litigation position or a specific legal argument that the state ultimately adopted? If so, please explain.

Yes. In any number of matters, I had responsibility for considering and determining litigation strategy, which included considering which litigation position or specific legal arguments our office would advance on behalf of the State.

9. While serving as Solicitor General of Florida, did you ever recommend that the state should not take a particular litigation position or should not make a specific legal argument that the state nevertheless adopted? If so, please explain.

Yes. Within the office there were frequent discussions and debates about what litigation strategies would best serve the State’s interests. It would be unfair to my former clients and inconsistent with my duties of loyalty and confidentiality to disclose specific details of such internal deliberations.

10. In 2015, as Solicitor General of Florida, you defended Florida’s law that forced women to wait 24-hours before they could access medical care for an abortion. (Appellant’s Initial Brief, *Florida v. Gainesville Woman Care* (Case No. 1D15-3048)) In 2017, the Supreme Court of Florida held that the law was unconstitutional.

a. Before defending the law in court as Solicitor General, did you first make any assessment and/or determination about the constitutionality of the law? If so, what was your assessment? If not, were you concerned with defending such a law in court without making such an assessment?

Yes. Before making any defense of any law, I made an assessment about whether I could advance a good-faith defense of the law. My assessment in that case was that we could. The challenge turned exclusively on a provision of Florida's constitution; there was no claim that the challenged law violated the United States Constitution. My assessment was that we could assert a good-faith argument that the challenged law was consistent with Florida's constitution.

In a brief filed by the state of Florida in the case, you argued of the mandatory 24-hour waiting period: "a woman has an opportunity to consider her decision in private, away from the potentially coercive environment of a clinic."

b. What evidence supports the assertion that women's health providers create "potentially coercive environment[s]"?

My involvement in the case was at the temporary injunction stage and the appeal from the order granting a temporary injunction. My recollection is that there was not an evidentiary record developed on that assertion at that stage of the litigation. The brief quoted above cited to testimony the Legislature heard before enacting the challenged provision.

11. While in private practice at GrayRobinson, you represented the state of Florida in a challenge to a Florida voter registration law that compared voter registration application information with state drivers' license and social-security databases. This law was commonly referred to as the "no match, no vote" law. A brief you submitted on behalf of the state of Florida argued that the law was "an essential preventative of election fraud." (Initial Brief of Florida, 2008 WL 838735 (Jan. 4, 2008), *Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153 (11th Cir. 2008))

a. According to the Brennan Center for Justice, Florida's "no match, no vote" law blocked more than 16,000 eligible Floridians from voting. (See <http://www.brennancenter.org/press-release/florida-enforce-restrictive-no-match-no-vote>) In defending the law, did you consider any evidence showing that the law disenfranchised legal voters?

Yes. The litigation position the State defendants advanced was that the law did not disenfranchise legal voters because, among other things, the law allowed those without an initial database match to subsequently verify eligibility.

b. Does widespread voter fraud exist in the United States? If yes, what evidence supports your belief?

I have not studied that topic. But because the existence and prevalence of voter fraud is a frequently litigated topic, it would be inappropriate for me to offer any views on it.

c. Do you agree with President Trump's claim that 3 to 5 million people voted illegally in the 2016 Presidential election? If yes, please explain why.

Please see my response to question 11b.

12. In 2014, as Solicitor General of Florida, you defended a Florida statute that required applicants for benefits under the Temporary Assistance for Needy Families (TANF) Program to submit to suspicionless drug testing as condition of eligibility. (Initial Brief of Appellant, *Lebron v. Sec’y of Fla. Dep’t of Children & Families*, 772 F.3d 1352 (11th Cir. 2014), 2014 WL 1870513 (May 5, 2014).) The Eleventh Circuit invalidated the law on the grounds that it violated the Fourth Amendment. **Please describe your role in defending this case. Did you participate in the preparation of, supervise attorneys, or give approval for the arguments made in briefs or at oral argument?**

I was not involved in this case at its inception, but I later joined the legal team defending the law. While serving as Solicitor General, I was the principal attorney responsible for the matter. Other attorneys in the office contributed to the briefs, but I was responsible for and approved the briefs’ contents. I assisted in the preparation for oral argument, but a colleague argued the case at the Eleventh Circuit.

13. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), 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?**

My White House interview in December 2017 covered multiple topics, and I do not recall the details of all questions and answers. To the best of my recollection, there was a general question about administrative law, but I do not recall who asked it. I do not recall the specifics of my answer, beyond my noting that I had not handled a substantial number of cases involving federal administrative law and my outlining my understanding of precedents on administrative law, including *Chevron* deference.

- 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.

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

The Supreme Court has indicated that it can be appropriate to consider legislative history when a statute's text is not clear and unambiguous.

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 at 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.

The Department of Justice provided me with these questions. I immediately began drafting responses and submitted my completed responses to the Department of Justice to solicit input. Attorneys there suggested some formatting and other nonsubstantive changes, and I approved these final responses for submission.

**Nomination of Allen Cothrel Winsor
United States District Court
For the Northern District of Florida
Questions for the Record
Submitted May 30, 2018**

QUESTIONS FROM SENATOR WHITEHOUSE

1. 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?

I consider that an apt metaphor. Just as an umpire has no allegiance to either team, a judge has no allegiance to either party. As with umpires, a judge’s job is to apply the rules fairly and evenly, not to work toward a particular outcome.

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

In general, judges should not consider the practical consequences of the ruling in making their decisions. In some instances, however, the law requires such consideration. For example, before issuing a preliminary injunction, courts must consider the consequences of their doing so. Similarly, judges’ decisions on limiting discovery may consider the costs and burdens the order would impose.

2. 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 apply the law fairly, without regard to the judge’s personal preferences. Accordingly, a judge should not let his or her empathy control a judicial decision. Having said that, a judge’s empathy can help the judge understand the parties and their arguments, and it can help a judge treat parties and counsel with dignity and respect. In that sense, I agree that a judge benefits from having a sense of empathy.

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

Every human being is influenced by his or her personal life experiences. A judge should ensure, however, that his or her decisions are made impartially and without regard to any personal history or life experience. In other words, a litigant’s case should not be won or lost depending on which life experiences the assigned judge has had.

3. 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.

4. What assurance can you provide this committee and the American people that you would, as a federal judge, equally uphold the interests of the “little guy,” specifically litigants who do not have the same kind of resources to spend on their legal representation as large corporations?

I left the role of an attorney and became a state judge more than two years ago. I have approached each case as a judge with an open mind, and I have decided each case based on the law, without regard to whether or not a litigant is “the little guy.” I have always ruled without regard to any party’s status. My decisions include those both for and against the State, both for and against indigent defendants, both for and against corporations. If confirmed as a federal judge, I would continue to decide cases without regard to any party’s status.

- a. In civil litigation, well-resourced parties commonly employ “paper blizzard” tactics to overwhelm their adversaries or force settlements through burdensome discovery demands, pretrial motions, and the like. Do you believe these tactics are acceptable? Or are they problematic? If they are problematic, what can and should a judge do to prevent them?

It is unacceptable to abuse the discovery process or motions practice for the purposes described in your question. Federal judges should ensure that parties do not misuse the litigation process in that manner. The Federal Rules of Civil Procedure authorize judges to, among other things, ensure that discovery is proportional to the needs of the case (including consideration of parties’ resources) and to sanction parties for frivolous motions and other improper filings.

5. Do you believe that discrimination (in voting access, housing, employment, etc.) against minorities—including racial, religious, and LGBT minorities—exists today? If so, what role would its existence play in your job as a federal judge?

I believe discrimination still exists in many circumstances, including those identified above. Congress has enacted laws to address discrimination in many contexts, and if confirmed, I would apply those laws. I would also ensure that parties and others appearing before me were treated equally and without regard to their status.

6. You have been nominated to replace Judge Hinkle, who ruled that Florida’s constitutional amendment banning same-sex marriage was unconstitutional. In your Motion to Dismiss in that case, you unsuccessfully argued that Florida has an “unbroken history of defining marriage as being between a man and a woman,” and that this definition survived rational basis review. In your confirmation hearing, you acknowledged that “the role of an advocate is very different than the role of a judge.” What steps will you take to move past your previous advocacy and apply the law as an impartial arbiter? How will you ensure that all litigants before you—regardless of race, gender, or sexual orientation—feel that they are treated equally?

When I became a state judge in 2016, I left behind any previous advocacy. As a judge, I have decided cases based on the law, without regard to or consideration of any previous advocacy. And I have always ensured that all parties coming before me are treated equally without regard to status. If confirmed as a federal judge, I would continue to do that.

7. During your time in private practice, you litigated redistricting cases on behalf of the Florida legislature and “worked with and advised House leaders and staff and coordinated with experts” on redistricting issues. As a federal judge, what would be your role in ensuring impartial or non-discriminatory redistricting?

If confirmed, I would approach any lawsuit involving redistricting in the same manner I would approach any other case. I would consider all claims and defenses with an open mind, and I would decide all issues based on the law.

Questions for the Record
Senator Mazie K. Hirono
Allen Cothrel Winsor, Northern District of Florida

INTRODUCTION: Chief Justice John Roberts has recognized that “the judicial branch is not immune” from the widespread problem of sexual harassment and assault and has taken steps to address this issue. As part of my responsibility as a member of this committee to ensure the fitness of nominees for a lifetime appointment to the federal bench, I would like each nominee to answer two questions.

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.

**Nomination of Allen Cothrel Winsor to the
United States District Court for the Northern District of Florida
Questions for the Record
Submitted May 30, 2018**

QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institute 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.¹ Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.² 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.³ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴

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

Although I have not studied the matter in detail, I am generally aware of the concept of implicit racial bias. I am not familiar enough with the social science on the topic to have an opinion as to whether or to what extent implicit racial bias is a factor in our criminal justice system. Having said that, I believe it is important for judges and others to practice mindfulness and to ensure that their decisions turn exclusively on proper considerations.

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 had not studied the issue in detail, and I cannot cite any books, articles, or other reports I have reviewed. I have read several newspaper and magazine articles on the topic, some of which summarized more detailed studies.

¹ JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), available at <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

² *Id.*

³ ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), available at <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁴ *Id.* at 8.

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.⁵ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.⁶
 - a. Do you believe there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

My understanding is that there is a wide variety of factors that affect crime rates. I have not studied the matter and do not have a view on the relationship between incarceration populations and crime rates.

- b. Do you believe there is a direct link between decreases of 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 2a.

3. 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.

4. Since *Shelby County, Alabama v. Holder*, states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate someone voter at the polls.⁷ One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.⁸ Despite this, President Trump, citing no information, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

⁵ THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), available at http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

⁶ *Id.*

⁷ JUSTIN LEVITT, THE TRUTH ABOUT VOTER FRAUD, BRENNAN CENTER FOR JUSTICE 6 (2007), available at <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>.

⁸ Justin Levitt, *A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast*, THE WASHINGTON POST, Aug. 6, 2014, available at https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.4da3c22d7dca.

- a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?

The existence of and prevalence of voter fraud are frequently litigated issues. As a federal court nominee and as a sitting state court judge, it would be inappropriate for me to state a view on this topic.

- b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?

Please see my response to question 4a.

- c. Do you believe that restrictive voter ID laws suppress the vote in poor and minority communities?

The permissibility of voter ID laws is a frequently litigated issue. As a federal court nominee and as a sitting state court judge, it would be inappropriate for me to state a view on this topic.

Questions for the Record from Senator Kamala D. Harris
Submitted May 30, 2018
For the Nomination of

Allen Cothrel Winsor, to be U.S. District Judge for the Northern District of Florida

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?

Sentencing is among the most serious duties of any trial judge. If confirmed, I would approach each sentencing with a recognition that every case must be decided based on its own specific facts and circumstances. I would carefully consider all applicable statutes, the advisory sentencing guidelines, any other pertinent legal authorities, any presentence report, any arguments from the parties, and any statements from victims or other witnesses. Throughout, I would be mindful of Congress's direction that any sentence should be "sufficient, but not greater than necessary, to comply" with the congressionally designated purposes of federal sentencing: "the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; [] to afford adequate deterrence to criminal conduct; [] to protect the public from further crimes of the defendant; and [] to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553.

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

Please see my response to question 1a.

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

The Guidelines and other authorities provide guidance on when a departure sentence would be appropriate. If confirmed, I would carefully consider all such authorities, and the factors articulated in 18 U.S.C. § 3553, and the positions of the parties before deciding whether a departure sentence was appropriate.

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 establishment of mandatory minimum sentences is a policy matter subject to legislative judgment. If confirmed, I would apply sentencing laws as enacted, without regard to any personal views on the efficacy of the required sentences. The Florida Legislature has adopted mandatory-minimum sentences for certain categories of crimes, and as a state judge, I have applied those laws as required. As a nominee to a federal court, and as a current state court judge, it would be inappropriate for me to share personal views on legislative policy judgments.

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 previously criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.² If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:

1. Describing the injustice in your opinions?

If confirmed, I would be obligated to comply with any mandatory sentencing statutes, provided they were constitutional. I would apply those laws—as any other law—without regard to my personal views as to whether the sentences led to unfair outcomes. In many instances, I believe judges should provide detailed opinions explaining the facts and circumstances of the crime and the law that required the sentence imposed, all of which can be done without offering a judge’s personal views on the wisdom of any of Congress’s policy decisions.

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

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

Although charging decisions are generally matters left to the executive branch, if I encountered a situation in which I questioned the propriety of federal prosecutors' charging policies, I would investigate any steps available under the law and consistent with the Code of Judicial Conduct and other ethical obligations.

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

Under our system, the clemency process is committed to the Executive Branch, and if confirmed as a federal judge, I would not advocate for or against clemency for any defendant.

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

Although I have not studied the issue in depth, I do understand that there are racial disparities in our criminal justice system. For example, my understanding is that racial minorities comprise a greater percentage of the incarcerated population than they do of the overall population.

3. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

- a. Do you believe that 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.