

Oklahoma District Attorney Candidate Questionnaire

For more than 50 years, the American Civil Liberties Union of Oklahoma has worked in the courts, the legislature, and through public education to protect individuals' civil rights and liberties. As part of our organization's nationwide effort to cut the nation's prison population in half while combating racial disparities in the criminal justice system, the ACLU of Oklahoma is launching a public education campaign around prosecutorial discretion. Our goal is to educate voters, including members of the ACLU of Oklahoma and those directly impacted by incarceration, about the role the district attorneys play in mass incarceration. Our campaign will also work to provide voters with information about where candidates for District Attorney stand on critical criminal justice reform issues, such as prosecutorial transparency, policies that reduce incarceration, eliminating racial disparities in the criminal justice system, and ending unjust policies such as the death penalty, money bail, and civil asset forfeiture. All candidates for District Attorney in Oklahoma are receiving this questionnaire, and answers will be posted online. Through this campaign, the ACLU of Oklahoma is working to make Oklahoma voters more aware of the awesome powers that District Attorneys have and hold candidates for this powerful position accountable to their communities' fundamental need for justice, safety, and respect.

Please write your answers in this document and **email your responses** to Nicole McAfee at **NMcAfee@acluok.org** on or before **May 23, 2018**.

Contact Information

Please provide constituents with your campaign contact information.

Name, as listed on the ballot: Ben Fu

Phone number: 918-973-2417

E-mail: info@electbenfu.com

Website: electbenfu.com

Facebook URL: @electbenfu

Twitter handle: @electbenfu

Instagram: @electbenfu

Other:

Mission and Vision

1. Will you pledge to articulate a mission and vision for the Office that places the focus on justice, rather than winning cases, and align the work of the Office—including internal and external communications, training, policies, and hiring and promotion practices—to reflect that mission and vision?

Please give a clear “Yes” or “No” and any explanation.

Yes. If elected I will cultivate a culture of justice both for victims, society, and defendants. When it means protecting the public and achieving justice for a victim of violent crime, a jury verdict recommending significant punishment for violent criminals and sexual predators will be cause for celebration.

Likewise, for the vast majority of charges that involve non-violent activity, we will foster an environment that recognizes that government is never more oppressive than when it asks more of a debt from a citizen than what justice demands. We will utilize alternatives to incarceration for veterans, the mentally ill, and those suffering from addiction in order to promote public safety while simultaneously redirecting offenders away from a costly and overpopulated prison system and toward treatment and participation as citizens in our community.

Mass Incarceration

2. Do you agree that prosecutors' practices have contributed significantly to mass incarceration? Please give a clear “Yes” or “No” and any explanation

Yes. Discretion, culture, and lack of perspective can often lead to filing criminal charges in a way that can lead to prison overpopulation. In 2016, despite the fact that Tulsa County law enforcement arrested 500 individuals than in 2011, the District Attorney's office filed 2,000 more felonies and 500 more misdemeanors than five years before.

3. Many experts say that overcharging by prosecutors unfairly pressures defendants into pleas, even with weak or insufficient evidence. Would you pledge not to use charging decision as a tool to gain leverage over defendants? Please give a clear "Yes" or "No" and any explanation.

Yes. However, a distinction must be made. Often times prosecutors choose NOT to charge every offense when initially filing charges. In instances where the Defendant declines a plea bargain from the State, it is appropriate to add more eligible charges at preliminary stages of filing. In my opinion, such charging decisions are distinct from instances in which prosecutors intentionally charge numerous counts with the intent of dismissing some to facilitate a plea bargain.

4. Criminal justice contacts – however brief – can have negative psychological and employment effect, and often fail to address the underlying cause of crime. Will you work to expand diversionary programs so that, whenever possible, contact with the criminal justice system is avoided or limited? Please give a clear "Yes" or "No" and any explanation.

Yes.

Racial Disparities

5. Will you commit to tracking and working to eliminate any racial disparities caused by decisions made by the Office, including disparities in charging decisions, bail recommendations, diversionary program placements, and plea bargains? Further, will you commit to making the results of your tracking easily accessible to the public? Please give a clear "Yes" or "No" and any explanation.

Yes.

6. Will you commit to requiring that prosecutors participate in implicit bias training to reduce the possibility that subconscious and unintentional attitudes about other people based on characteristics such as race influence the prosecution of cases in your district?

Poverty Penalties and Bail Reform

7. Do you favor changes at the state level to greatly reduce or eliminate the use of monetary payment as a condition of pretrial release? Please give a clear “Yes” or “No” and any explanation.

No. I prefer discretion at a local level to meet the unique challenges of our community. Bond should never be used to disproportionately punish the indigent. But, I will only agree to programs that lower or eliminate bonds where they are objectively shown to provide the same level of safety to the public as the current system.

8. Will you limit requests for money bail and pledge to recommend, for all legally permissible cases, presumptive release of defendants without financial conditions unless there is an individualized showing of substantial and identifiable flight risk or danger to the community and that money bail is necessary to address this danger or flight risk? Please give a clear “Yes” or “No” and any explanation.

No.

9. Will you commit to avoiding, imposing costs of diversionary program participation on individuals and basing charges, if absolutely necessary, on a “sliding scale” fee structure that considers an individual’s ability to pay? Please give a clear “Yes” or “No” and any explanation.

Yes. In all instances where not necessary to fund the existence of a program, I will endeavor to make participation in diversionary programs available to those defendants who will actively engage in, and benefit from, such programs.

Transparency and Accountability

10. Will you pledge to collect and post online quarterly statistical information disaggregated by race and gender on felony and misdemeanor charging decisions, convictions, declinations, and diversion program placements? Please give a clear “Yes” or “No” and any explanation.

No. The collection of such data is costly and time-intensive. The workload of a District Attorney’s Office can be crushing. For that reason, I cannot commit resources to the collection of such data where they may not exist. If a cost-effective method for collecting and reporting such data is made available, I am in favor of making that information available to the public.

11. Will you pledge to publish on the Office website all policies, protocols, and MOUs regarding prosecution guidelines, police-involved incidents, bail recommendations, fines and fees, diversion programs, plea bargains, civil asset forfeiture, immigration considerations, and indigency determinations? Please give a clear “Yes” or “No” and any explanation.

No.

12. Will you pledge to develop and implement a plan to personally, regularly and meaningfully engage and communicate with the community in the county or counties you represent, including communities of color, the immigrant community, community-based organizations, and criminal justice reform advocates, and involve them in the project of determining the priorities of your office within the first 100 days of your term? Please give a clear “Yes” or “No” and any explanation.

Yes. As a person of color and son of immigrants myself, I believe that the perspective gained from the wealth of diverse experiences in our community can only aid me in serving my public.

13. Will you pledge to create a Conviction Integrity Unit and, as part of that process, compare current operations against the guidelines published by the [Innocence Project in October 2015](#)? Please give a clear “Yes” or “No” and any explanation

No. The budget has absolutely no ability to dedicate the resources necessary for such a project. Integrity in convictions should be secured by case

evaluation and proper discretion cultivated through a culture of service and a recruitment philosophy that prioritizes the truth and justice.

14. Will you ensure, that every stage of the criminal process your office oversees is communicated to victims in terms they understand and take time to explain the process without legal jargon? Please give a clear “Yes” or “No” and any explanation.

Yes. As a prosecutor in Tulsa County for eight years, I held communication with victims as the highest priority for all prosecutors I trained and for myself.

15. Will you pledge to assign special prosecutors authorized to investigate and prosecute police killings of civilians, use-of-force cases, sexual assault by law enforcement officers and other cases of police misconduct as appropriate? Please give a clear “Yes” or “No” and any explanation.

No. The Tulsa County District Attorney’s Office lacks the resources to create such a unit. However, as is the current practice, all high priority officer-involved shootings will be reviewed by only senior-level prosecutors. I pledge to require all prosecutors who review such charges to train in use-of-force to better inform any decision to decline or approve charges.

16. Will you pledge to recruit and hire people with criminal records to work in your District Attorney’s Office? Please give a clear “Yes” or “No” and any explanation.

No. Though in many instances I do not believe a criminal record should prohibit someone from working in my organization, in hiring and recruiting is vital to find persons with the appropriate combination of skills, education, and passion for advocating on behalf of victims will always be the primary criteria for hiring.

Immigration

17. Will you pledge to adopt a written policy and training which encourages prosecutors to consider the unintended immigration-related consequences of prosecutorial decisions at all stages of a case and to use their discretion to reach immigration-safe dispositions for noncitizens whenever it is possible and appropriate? Please give a clear “Yes” or “No” and any explanation.

No. I believe the disposition of all cases should be directed at the greater aims of justice. Where justice demands mercy and discretion, both should be exercised. However, all defendants should be treated fairly, regardless of his or her immigration status. A defendant's status as a non-citizen should not secure a more lenient sentence than a citizen would receive any more than a citizen should receive a more lenient sentence than a noncitizen.

18. To protect immigrant crime victims, will you pledge to adopt and promote a written U Visa policy that includes a rebuttable presumption of helpfulness and the direction that U Visa certifications be completed regardless of whether charges were brought, a conviction was achieved, or the case has concluded? Please give a clear "Yes" or "No" and any explanation.

Yes. I will continue the same practice I had when I was a prosecutor for eight years; So long as immigrant victims of crime participate in the system to remove offenders from society, I will, as is my legal obligation, participate in the promotion of U Visa applications.

19. Will you pledge to adopt a written policy which prohibits questions about the immigration status of crime victim or witness?

No. Often defense attorneys will ask such questions in court. In order to prepare our witnesses and victims for this line of questioning, it is imperative that we are able to discuss it with them prior to testifying in court. To do otherwise would be to subject persons - who often must testify through a translator - to such questioning for the first time by a defense attorney in open court. Such surprises can be frightening to some witnesses who may then testify in a way that is damaging to the prosecution. Instead of such a policy, I will pledge to adopt a policy that fully explains to all noncitizen witnesses, and victims that their participation as witnesses and victims for the prosecution will never negatively impact their residency.

Youth Justice

20. Will you pledge to not seek the certification of juveniles as adults? Please give a clear "Yes" or "No" and any explanation.

No. Although rare, there are some acts of extreme violence or sado-sexual assault that necessitate certification of juvenile defendants as adults. Such

certifications should be rare, and only in those instances where the public's safety cannot be secured through the juvenile system.

21. Will you pledge to require, when possible, that juvenile trauma histories be considered at all points in the process when evaluating whether a youth should be incarcerated, diverted, or subject to other dispositions? Please give a clear "Yes" or "No" and any explanation.

Yes.

22. Will you pledge to never seek a life without parole sentence for a juvenile? Please give a clear "Yes" or "No" and any explanation.

No. Although rare, there are instances in which life without parole is necessary, even for a juvenile defendant.

Discovery

23. Will you pledge to require that prosecutors turn over full discovery to the defense pre-indictment? Please give a clear "Yes" or "No" and any explanation.

No. The current system is unable to accommodate such requests in a timely manner. When such resources become available, absolutely "full" discovery will be available to the defense as soon as possible. But a pledge of "yes" at this time, would result in significant delay in court proceedings which would disproportionately affect defendants in custody.

24. Will you implement and require Brady training for your prosecutors which specifically addresses evidence considered exculpatory or that otherwise qualifies as Brady materials? Please give a clear "Yes" or "No" and any explanation.

Yes.

Other Issues

25. Will you adopt a policy requiring a criminal conviction before forfeiting property? Please give a clear “Yes” or “No” and any explanation.

26. Will you vehemently oppose any attempt to criminalize either a doctor performing or a patient seeking an abortion? Please give a clear “Yes” or “No” and any explanation.

Any such law would be stricken down as unconstitutional. As District Attorney, I would have no role in the legislative process. I would, however, oppose the passage of any unconstitutional laws.

27. Will you commit to not seeking the death penalty? Please give a clear “Yes” or “No” and any explanation.

No. The death penalty is the most severe punishment available to the State. It should only be considered in the most extreme and rare circumstances. As an elected official in a jurisdiction where the Death Penalty is the law, it is only appropriate that their District Attorney consider all legal options under the law.

28. Do you support alternatives to incarceration. Please give a clear “Yes” or “No” answer. If yes, please explain what kind of alternatives you would provide from your position as district attorney (examples include restorative justice, community service, drug court, mental health court, work release, personal recognizance bonds, etc.).

Yes. Diversionary programs are often less costly and more effective than full involvement in the criminal justice system. I would encourage alternative dispute resolution for first-time non-violent misdemeanors that utilize mediators from the community and contracts between victims and defendants that prioritize restitution in lieu of court costs and supervision fees.

Oklahoma Criminal Justice Reform

29. Will you pledge to work toward the reforms recommended by Governor Fallin’s Oklahoma Justice Reform Task Force in 2016. Please give a clear “Yes” or “No,” and, if no, explain why.

Yes.

30. Will you commit to reviewing the cases of currently incarcerated people whose sentence would be a misdemeanor under SQ 780, and expediting release. Please give a clear “Yes” or “No” and explain why.

Yes. In those instances of incarcerated persons with no violent criminal history, I support the retroactive application of SQ 780.

31. Will you be a champion for reforms like state question 780 that work to reduce the number of Oklahomans behind bars, and also work to fund treatment and alternatives to incarceration? Please give a clear “Yes” or “No” and explain why.

Yes. Proper reform is badly needed. But such reforms should be focused on the appropriate outcome for defendants and victims, not on simply reducing numbers for the sake of lowering costs.

32. Will you commit to meet with organizations championing criminal justice reform around in-office and legislative changes that could be made to reduce the number of Oklahomans in prisons and jails? Please give a clear “Yes” or “No.”

Yes.

33. Will you pledge to use your position on the District Attorneys Council to ensure that communications, decisions, and deliberations about policies, protocols, etc., be made public in an easily accessible and searchable format?

No. I am unclear as to what this question is asking.

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