

**Nomination of Michael Joseph Juneau to the
U.S. District Court for the Western District of Louisiana
Questions for the Record
Submitted October 11, 2017**

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 a district court to depart from Supreme Court or the relevant circuit court's precedent?

Response: Apart from the situation where the relevant circuit court or the Supreme Court has overridden its prior precedent, a district court is always bound to follow precedent established by the Supreme Court or that of the relevant circuit court and is not allowed to depart from that precedent in any circumstance.

b. When, if ever, is it appropriate for a district court judge to question Supreme Court or the relevant circuit court's precedent?

Response: A district court is always bound to follow precedent established by the Supreme Court or the relevant circuit court. In those instances where there is disagreement amongst the circuit courts, with no resolution by the Supreme Court, it might be appropriate for the district court to note that disagreement, but the district court is nonetheless bound to follow the precedent of the relevant circuit court.

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 textbook 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 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"? "superprecedent"?

Response: I have not studied Chief Justice Roberts' nor Justice Gorsuch's use of those terms. But as a practical matter, all precedent of the Supreme Court, including *Roe v. Wade*, is "super-precedent" in that it is clearly binding on a district court.

b. Is it settled law?

Response: Yes, *Roe v. Wade* is settled, binding law of the United States Supreme Court.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry.

a. Is the holding in Obergefell settled law?

Response: Yes, *Obergefell v. Hodges* is settled, binding law of the United States Supreme Court.

b. On Friday, June 30, the Texas Supreme Court issued a decision in *Pidgeon v. Turner* which narrowly interpreted Obergefell and questioned whether states were required to treat same-sex couples equally to opposite-sex couples outside the context of marriage licenses. The Texas Supreme Court stated that “The Supreme Court held in Obergefell that the Constitution requires states to license and recognize same-sex marriages to the same extent that they license and recognize opposite-sex marriages, but it did not hold that states must provide the same publicly funded benefits to all married persons, and... it did not hold that the Texas DOMAs are unconstitutional.” Is this your understanding of Obergefell?

Response: I have not studied this Texas Supreme Court opinion, and I am not familiar with the holding or the reasoning of that opinion. Further, it would be inappropriate for me to comment on or give any personal opinions on legal issues that may come before me if I am confirmed as a district judge. If I am so fortunate as to become a district judge, I will faithfully apply the precedent of the United States Supreme Court as set forth in *Obergefell v. Hodges*.

4. 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?

Response: It would be inappropriate for me to comment on or give any personal opinions on legal issues that may come before me if I am confirmed as a district judge. If I become a district judge, I will faithfully apply the precedent of the United States Supreme Court, including *District of Columbia v. Heller*.

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

Response: Though it would be inappropriate for me to comment on or give any personal opinions on legal issues that may come before me if I am confirmed as a district judge, I do note that the Supreme Court’s opinion in *Heller* provides 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.”

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

Response: I do not have sufficient familiarity with this issue to offer an informed opinion. But *Heller* represents binding precedent of the Supreme Court, which I will faithfully apply if I am confirmed as a district judge.

5. 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?

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

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

Response: It would be inappropriate for me to comment on or give any personal opinions on legal issues that may come before me if I were confirmed as a district judge. If I become a district judge, I will faithfully apply the precedent of the United States Supreme Court, including *Citizens United v. FEC*.

6. At your nomination hearing, Senator Hirono asked you a number of questions about your membership in the Alliance Defending Freedom (ADF) and the organization’s positions on gay rights—positions which have led the Southern Poverty Law Center (SPLC) to characterize ADF as an anti-LGBT hate group. Although you rejected certain positions that ADF has been alleged to have taken, you also sought to defend ADF, stating that you disagreed with Senator Hirono’s “characterization” of ADF. You stated that ADF is “one of the most well-respected Supreme Court advocates” in the nation, adding that it does not “stand for” and “never has” stood for certain positions that Senator Hirono mentioned. SPLC has stated that “the Alliance Defending Freedom is a legal advocacy and training group that has supported the

recriminalization of homosexuality in the U.S. and criminalization abroad; has defended state-sanctioned sterilization of trans people abroad; has linked homosexuality to pedophilia and claims that a ‘homosexual agenda’ will destroy Christianity and society,” and on the webpage it has devoted to the Alliance Defending Freedom, SPLC details which positions ADF has taken or which quotes by ADF leaders and lawyers led SPLC to characterize ADF’s views that way.

- a. **Please review the Southern Poverty Law Center’s page about the Alliance Defending Freedom (available here: <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>). Which aspect(s) of SPLC’s characterization of ADF do you believe is inaccurate or unsupported, and why?**

Response: It is my understanding that SPLC has characterized ADF as a “hate group” and has claimed that ADF favors criminalization of homosexuality, favors sterilization of transgender individuals, and believes homosexuality is correlated to pedophilia. I believe that characterization of ADF and its policy positions is inaccurate in all respects.

- b. **Please detail whether there are specific ADF positions or views that you disagree with.**

Response: I believe that it would be inappropriate for me to comment on my personal political positions or views as a judicial nominee, under the canons of the Code of Conduct for United States Judges.

7. During your nomination hearing before this Committee, you explained to Senator Hirono that you are an “Allied Attorney” of ADF. According to ADF’s website, Allied Attorneys must either affirm or agree with ADF’s Statement of Faith. Among other principles, the Statement of Faith includes the following: “We believe God immutably creates each person as male or female. These two distinct, complementary genders together reflect the image and nature of god, and rejecting one’s biological sex rejects the created image of God”; “We believe God designed marriage as a unique conjugal relationship joining one man and one woman in a single, exclusive, life-long union. God intends sexual intimacy to only occur between a man and a woman joined in marriage”; and “We believe God endows all human life with inherent dignity at every stage of development and it must be respected and protected from conception to natural death. Thus, the unjustified, intentional taking of human life before or after birth is sinful and offensive to God.”

- a. **Did you review this statement before agreeing to it or affirming it as part of the process to become an Allied Attorney?**

Response: I do not recall if I read this Statement of Faith before I became an Allied Attorney.

- b. What assurances or evidence can you give the Committee and future litigants who come before you that you will be fair and impartial to everyone who appears before you, if confirmed?**

Response: If I am so fortunate as to be confirmed as a district judge, I will treat *all* people who come before me with dignity, respect and impartiality. All individuals are absolutely entitled to be so treated. I will hold this obligation and responsibility with the utmost gravity. I am solemnly committed to treating all impartially, fairly, and with respect. And I am also solemnly committed to follow whatever the governing law may be on any given issue irrespective of what my own personal views on a subject may be.

- c. Specifically, what assurances or evidence can you give to future LGBT litigants who come before you that you will treat them fairly and impartially?**

Response: Please see my response to Question 7(b).

- d. Lastly, what assurances or evidence can you give to future litigants in cases that may involve reproductive rights, access to contraception, or physician- assisted suicide that you will treat those issues fairly and impartially?**

Response:

Please see my response to Question 7(b).

8. Please explain your view of the appropriate temperament of a judge. Do you believe you have the appropriate temperament to be a judge?

Response: I believe it important that a judge have a spirit of humility, understanding that all people deserve respect and dignity, no matter what their role or station in life may be. I think it also important that a judge be patient, thoughtful, open-minded, even-tempered and respectful. I believe that I possess these qualities.

9. According to your Questionnaire, your legal career has involved entirely civil litigation.

- a. What steps are you undertaking to prepare yourself to hear criminal cases?**

Response: I am reviewing texts, treatises, statutory provisions and CLE materials in the area of criminal law. I am also consulting with and obtaining practical education from numerous others who have a wealth of experience in the field of criminal law including: appellate judges, district judges, magistrate judges, prosecutors, criminal defense

lawyers, and public defenders. I have also arranged to “shadow” other district judges in the course of their criminal dockets. Finally, I also plan to seek out law clerks with experience with federal criminal cases in the event that I am confirmed.

- b. How will you familiarize yourself with the requirements of the Speedy Trial Act, a defendant’s right to counsel, a defendant’s right against self-incrimination, prosecutors’ obligations under *Brady v. Maryland* and *Gigliov. United States*, and other critical aspects of criminal proceedings?**

Response: Please see response to Question 9(a).

10. A federal district court judge’s responsibilities are not limited to trials but also include making decisions regarding sufficiency of evidence and procedural propriety, such as reviewing search and arrest warrant applications, monitoring various electronic evidence gathering methods, or determining pre-trial detention and release conditions.

- a. How familiar are you with the procedural and substantive rules that govern these various pre-trial hearings and investigative tools?**

Response: Please see response to Question 9(a).

- b. If you have no experience with these critical issues, how do you plan to educate yourself to understand these issues before you preside over any such matter?**

Response: Please see response to Question 9(a).

11. District court judges often say that the most difficult aspect of their job is sentencing defendants. Judges also comment that one of the most complicated legal areas are decisions involving the United States Sentencing Guidelines. How do you plan to familiarize yourself with the Guidelines, and, more importantly, how do you plan to prepare yourself to sentence criminal defendants?

Response: Please see Response to Question 9(a).

12. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on the evening of October 11, 2017. I drafted my responses entirely on my own. I then provided a draft of my responses to the Department of Justice’s Office of Legal Policy (“OLP”). After receiving feedback from the OLP, I edited my responses as I deemed appropriate and authorized the OLP to submit my responses to the Senate Judiciary Committee.

**Nomination of Michael Juneau to the
United States District Court for the
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Questions for the Record
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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?

Response: Yes. I agree with Justice Roberts. A judge’s role is to impartially apply the law, irrespective of what his or her own personal opinion on a given subject may be.

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

Response: A judge’s responsibility is to impartially apply the law to a given set of facts. A good judge may be cognizant of practical consequences, but ultimately, it is the judge’s responsibility to follow the law first and foremost.

- c. 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 judge to make a subjective determination?

Response: A summary judgment should be granted only when there is no genuine issue of disputed fact. If there is a subjective determination that needs to be made as to those facts, the resolution of that issue should be reserved for the jury.

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?

Response: In my view, empathy is valuable in terms of a judge’s obligation to treat people with dignity, respect, patience, and courtesy. But as to the actual decision to be made on a given issue, that decision should be made on the basis of what the law dictates.

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

Response: It is my hope that my own life experiences, whether as a father, a husband or a lawyer or whether just generally as a human being experiencing various hard times in life, will equip me to treat all who appear before me with empathy, dignity, respect and courtesy if I am confirmed as a district judge.

- c. Do you believe you can empathize with “a young teenage mom,” or understand what it is like to be “poor or African-American or gay or disabled or old”? If so, which life experiences lead you to that sense of empathy? Will you bring those life experiences to bear in exercising your judicial role?

Response: My life experiences are obviously unique to me, different from those of another individual. But I believe that those life experiences are invaluable and will very much serve to equip me to be a judge who treats those that come before him with respect, humility, courtesy and compassion in the event that I am so fortunate as to be confirmed.