

**Nomination of William Campbell, Jr. to the  
U.S. District Court for the Middle District of Tennessee  
Questions for the Record  
Submitted September 13, 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?**
  - b. **When, if ever, is it appropriate for a district court judge to question Supreme Court or the relevant circuit court's precedent?**

**RESPONSE:** If confirmed to serve as a District Judge, my duty would be to apply faithfully the law to the facts of each case. The legitimacy of our judiciary in the eyes of our citizenry rests in the predictability of the rule of law, including precedent. The default position of a District Judge should be to apply binding precedent, be it from the Supreme Court or Court of Appeals. When precedent is unambiguous, application to the facts of a specific case and controversy should occur without controversy. However, if higher court opinions are presented as precedential, but the bounds of those opinions are ambiguous and thus not easy to apply to a particular case, the District Court should endeavor to understand the scope and bounds of previous higher court decisions in order to apply the law to the case before the District Court. In so doing, a District Court would necessarily question and explore the scope and applicability of precedent to each case. This deliberative approach allows the parties and appellate court to understand where previous higher court rulings may or may not apply to certain cases in the opinion of the District 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 had the opportunity to review Justice Gorsuch's textbook or Chief Justice Roberts' confirmation hearing testimony, so I cannot comment about those statements or the context in which they were made. As a District Judge, I would be duty-bound to apply the law to the facts of each case. Supreme Court holdings are binding precedent and should be treated as such by lower courts. Respectfully, whether I agree with the characterization of the *Roe* decision as apparently it has been characterized by Justice Gorsuch and Chief Justice Roberts would not enter into the equation in light of the duty imposed on each District Judge to apply the law to the facts of each case.

**b. Is it settled law?**

**RESPONSE:** The *Roe* decision, as analyzed, affirmed and explained by the *Casey* decision, is the law of the land and should be followed by District Courts. Accordingly, the *Roe* decision is entitled to all the respect due Supreme Court precedent.

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:** The *Obergefell* decision is entitled to all the respect due Supreme Court precedent.

- 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:** Respectfully, the question appears to ask my opinion of the application of *Obergefell* decision to a case presented to the Texas Supreme Court concerning Texas law. As a District Judge nominee, I do not believe it would be appropriate to comment about those issues.

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:** Respectfully, as a District Judge nominee, I do not believe it would be appropriate to comment about Justice Stevens’ dissent. As stated before concerning Supreme Court precedent, the *Heller* decision is entitled to all the respect due Supreme Court precedent.

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

**RESPONSE:** Respectfully, as a District Judge nominee, I do not believe it would be appropriate to comment about policy issues relating to gun regulation.

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

**RESPONSE:** As I read the *Heller* decision, the Court addressed Second Amendment precedent in reaching its decision, and I defer to the Court's handling of any preceding Second Amendment cases. As a District Judge, if confirmed, I will afford the holding of *Heller* all the respect due Supreme Court precedent.

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?**

**RESPONSE:** As a District Judge nominee, I do not believe it is appropriate for me to offer a personal opinion about whether corporations have First Amendment rights that are equal to individuals' First Amendment rights. However, as a District Judge, if confirmed, I will afford the holding of *Citizens United* all the respect due Supreme Court precedent.

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

**RESPONSE:** As a District Judge nominee, I do not believe it is appropriate for me to offer a personal opinion the First Amendment rights afforded to individuals versus corporations. However, as a District Judge, if confirmed, I will afford the majority holding of *Citizens United* all the respect due Supreme Court precedent.

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

**RESPONSE:** As a District Judge nominee, I do not believe it is appropriate for me to offer a personal opinion about whether corporations have certain First Amendment rights. I understand the question to refer to *Burwell v. Hobby Lobby Stores, Inc.* As a District Judge, if confirmed, I will afford the holding of *Hobby Lobby* all the respect due Supreme Court precedent.

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

**RESPONSE:** I received the questions by email from the Department of Justice Office of Legal Policy ("OLP") on September 13, 2017. I worked on my responses over the course of several days and provided them to OLP on September 18, 2017.

Senate Judiciary Committee  
“Nominations”  
Questions for the Record  
September 6, 2017  
Senator Amy Klobuchar

**Question for Mr. Campbell, Nominee to be United States District Judge for the Middle District of Tennessee**

I would like to thank you for your service to our country as a Marine. I understand that, as an officer in the Marines prior to attending law school, you presided over a Summary Court Martial.

- How did your time in the military, including your exposure to military law, shape your perspective on the practice of law in your civilian life?

**RESPONSE:** Thank you for your kind words, Senator. It was a privilege for me serve as a Marine. That experience helped shape who I am, and I am eternally grateful for having that opportunity to serve our country.

My exposure to the Uniform Code of Military Justice involved mainly unit-level issues that are handled through non-judicial punishment when I served as a squadron Legal Officer. That experience taught me the importance of due process and protecting that process vigorously. Our young Marines were accused of violating regulations from time-to-time, but they were entitled to an impartial review of their conduct and consideration of all factors by the commanding officer before the appropriate punishment was imposed. I worked hard to ensure that the commanding officer was equipped to make his decision while also affording the accused Marine the protections of his or her due process rights.

The same focus on due process and impartiality applied to my role on a Summary Court Martial at Camp Lejeune. As the Summary Court, I was tasked with serving as prosecutor, defense counsel, and judge at the same time. The young Marine did not contest the charges, but I focused on proper due process and afforded him all the protections given those accused of a crime under the UCMJ.

As I began private practice after law school, the importance of process remained with me. I have tried throughout my private practice to ensure that each party (and counsel) is treated fairly, with respect, and with an understanding that each party has claims or defenses to be adjudicated. I hope to be given the opportunity to apply the same approach as a District Judge.