

**Responses of Susan L. Carney
Nominee to be United States Circuit Judge for the Second Circuit
to the Written Questions of Senator Jeff Sessions**

- 1. In your current role as Deputy General Counsel at Yale, can you describe generally, without revealing any privileges, any significant litigation that you have handled or for which you have been responsible?**

Response: As Acting General Counsel for half of 2008, I oversaw and worked with inside and outside counsel on all of Yale University's litigation. That docket included real estate-related litigation, employment-related litigation, and a wide variety of other suits. During the rest of my twelve-year tenure at Yale (in nine of which I have served as Deputy General Counsel), I have worked closely with the General Counsel in the management of a number of significant cases. For example, at present I am the primary day-to-day manager working with outside counsel on litigation in federal court involving the contested ownership of an important piece of art for which the monetary value has been estimated to be over one hundred million dollars. In 2008 and 2009, I was the primary internal manager working with outside counsel on proceedings in Connecticut courts concerning the reformation of a testamentary trust that established the University's rights with regard to certain Connecticut property used annually for a well-known University program. Earlier, I played that role in a significant, longstanding dispute involving the ownership of patents under the Bayh-Dole Act, which led to an appeal to and favorable disposition from the Second Circuit.

- 2. At your hearing, in response to a question from Senator Durbin, you testified that your work on intellectual property issues, including patent cases, would enhance your perspective as a federal judge on the Circuit Court of Appeals. Given that the Federal Circuit has exclusive jurisdiction over cases arising under the patent laws, of what relevance is your patents background to your qualification to serve on the Second Circuit?**

Response: Although the Federal Circuit is charged with exclusive jurisdiction over cases arising under the patent laws, patent law may be involved in complex commercial disputes and in other matters properly before the Second Circuit. For that reason, I mentioned it in passing in my response to Senator Durbin's question about my familiarity with intellectual property law. For example, the Second Circuit has recently addressed the legality under antitrust law of so-called "reverse exclusionary payments" by patent holders to alleged infringers. *See Ark. Carpenters Health & Welfare Fund v. Bayer AG*, 604 F.3d 98 (2010); *see also In re Tamoxifen Citrate Antitrust Litig.*, 466 F.3d 187, 190 (2d Cir. 2006) ("This appeal . . . requires us to address issues at the intersection of intellectual property law and antitrust law."). In another instance, the Second Circuit has recently joined other Circuit Courts of Appeals in applying, in a copyright setting, the test for when a preliminary injunction may issue that was established by the Supreme Court in a patent law case. *See Salinger v. Colting*, 607 F.3d 68 (2010) (holding that the Second Circuit's "long-standing standard for preliminary injunctions in copyright cases" was

abrogated by the patent decision in *eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006)).

3. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

Response: The Supreme Court ruled in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), that the Second Amendment establishes an individual right to bear arms. It affirmed and extended that ruling in *McDonald v. Chicago*, 130 S. Ct. 3020 (2010). If I am confirmed as a Circuit Judge, the *Heller* and *McDonald* decisions would control my analysis of the Second Amendment.

- a. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

Response: The Supreme Court stated in *Heller*, 128 S. Ct. 2783, 2817 n.27, that gun laws shall be evaluated against a standard stricter than rational-basis scrutiny and, if I am confirmed, I would follow that precedent.

4. **What is your view of the role of a judge?**

Response: A judge's role is to interpret and apply the law. A court of appeals judge must do so by applying the appropriate standard of review in his or her consideration of decisions that have been appealed, and by closely adhering to Supreme Court precedent and the prior decisions of the relevant Circuit, looking to other Courts of Appeals when useful. A judge is bound to carry out these tasks objectively, impartially, and to the best of his or her ability.

5. **Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances?**

Response: No.

6. **Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances?**

Response: No.

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

Response: I drafted my answers to these questions. I received comments on my draft answers from the U. S. Department of Justice. I prepared my final answers.

8. Do these answers reflect your true and personal views?

Response: Yes.