

Senator Vitter
Questions for the Record

Waverly D. Crenshaw, Jr.
Nominee, United States District Judge for the Middle District of Tennessee

- 1. What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

Response: In NLRB v. Canning, 134 S. Ct. 2550 (2014), the Supreme Court addressed when the President can make appointments under the Recess Appointments Clause in the Constitution. The Court held that the President can make recess appointments during a recess that lasts 10 days or more. As long as the Senate, under its rules, can transact business, it is not in recess and a recess appointment would not be appropriate. Id. at 2574. If I am fortunate enough to be confirmed, I will follow this and other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals on the issue of recess appointments.

- 2. In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?**

Response: In Planned Parenthood v. Casey, 505 U.S. 833 (1992), a plurality of the Supreme Court held that the test to determine the validity of laws restricting abortions is whether the law has the purpose or effect to place an undue burden on the woman seeking an abortion. Applying that test, the Supreme Court invalidated, in part, restrictions created under a Pennsylvania statute. I understand that the issue raised by this question is being litigated in various federal courts, so I do not believe it would be appropriate for me to address the issue because it could come before me as a judge, if I am confirmed. I will follow this case and other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals on issues regarding abortion, if I am confirmed.

- 3. The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?**

Response: The Supreme Court's decision in Roe v. Wade, 410 U.S. 113 (1973), has been modified by its decision in Gonzales v. Carhart, 550 U.S. 124 (2007), and Planned Parenthood v. Casey, 505 U.S. 833 (1992). Those cases are binding precedent and must be followed by lower court federal judges. If I am confirmed, I will follow these cases and other binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals regarding right to privacy issues.

4. **Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?**

Response: The Minnesota Supreme Court in Baker v. Nelson, 291 Minn. 310, 191 N.W. 2d 185 (1971), held that a state statute limiting marriage to persons of the opposite sex did not violate the First, Eighth, Ninth or Fourteenth Amendments to the Constitution. 291 Minn. at 315; 191 N.W. 2d at 187. Baker appealed to the Supreme Court, which dismissed the appeal "for want of a substantial federal question." Baker v. Nelson, 409 U.S. 810 (1972). The Supreme Court held in United States v. Windsor, 133 S. Ct. 2675 (2013), that the Defense of Marriage Act is unconstitutional, 133 S. Ct. at 2695, but recognized that the States have "virtually exclusive province" to define and regulate marriage. 133 S. Ct. at 2691. The Sixth Circuit Court of Appeals in DeBoer v. Richard Snyder, 772 F.3d 388 (2014), held that statutes in Michigan, Tennessee, Ohio and Kentucky that prohibited same-sex marriages or recognition of same-sex marriages from other states were constitutional. The Sixth Circuit's decision is pending before the Supreme Court in Obergefell v. Hodges, that may address the issue of whether the Constitution requires States to issue marriage licenses to same-sex couples. The Supreme Court's decision in Obergefell will be binding precedent. If confirmed as a district judge, I will follow all binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals on this issue.

5. **What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

Response: A district judge is required to follow decisions of the Supreme Court and the controlling Circuit Court of Appeals and has no discretion to do otherwise. As a district judge, if I am confirmed, any personal views, opinions or beliefs will have no role in the judicial decision making process.

6. **How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?**

Response: The Supreme Court has held in District of Columbia v. Heller, 554 U.S. 571 (2008), that the Second Amendment to the Constitution guarantees an individual the right to keep and bear arms for self-defense. In McDonald v. City of Chicago, 561 U.S. 742 (2010), that Second Amendment right was made binding on the States through the Fourteenth Amendment to the Constitution. I understand that there is litigation pending on the scope of an individual's right to keep and bear arms, so I do not believe it would be appropriate for me to address the issue that could come before me if I am fortunate enough to be confirmed. As a district judge, I would follow binding precedent of the Supreme Court and the Sixth Circuit Court of Appeals on Second Amendment issues.

7. Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?

Response: The Supreme Court recently held oral argument on Oklahoma's method of imposing capital punishment. It would not be appropriate to address this pending issue. If I am fortunate enough to be confirmed, I would faithfully follow the decisions of the Supreme Court and the Sixth Circuit Court of Appeals on the issue of capital punishment.

8. You clerked for Judge John T. Nixon from 1982-1984, and have spoken of him with admiration since that time.

a. How would you describe Judge Nixon's approach to the law?

Response: I clerked for Judge Nixon over 30 years ago, shortly after graduation from law school. The position offered me the unique experience to observe the internal operation of the judicial process. As a young lawyer, I was not in a position to assess Judge Nixon's approach to the law or the correctness of his judicial practices. However, I did observe that he displayed patience by allowing lawyers time to present their cases and witnesses time to give their testimony. I learned about federal procedure, trial practice, motion practice, persuasive writing skills and effective court room advocacy. Those lessons helped me to develop my own litigation style and approach, but since my clerkship, my skills and experiences as a trial lawyer have been more influenced by my actual trial and litigation experience representing individuals and companies, than the clerkship experience early in my career.

b. How has your experience as a clerk for Judge Nixon influenced your own views and practice of law?

Response: Please see above.

c. What are the five most lasting lessons you learned from him?

Response: Please see above.

d. What practices of his would you emulate?

Response: Please see above.

e. Are there any practices that you would want to avoid as a judge?

Response: Please see above.

9. You served on the board of the Capital Case Resource Center of Tennessee from 1988-1995.

- a. Did you work on any cases for the Capital Case Resource Center during that time? If so, please describe those cases.**

Response: No. The Capital Case Resource Center's focus was on offering assistance and support to lawyers representing clients who faced a sentence of death.

- b. How closely did you work with William Redick during that time? Did you continue to have contact with or support the endeavors of Mr. Redick after leaving the Capital Case Resource Center?**

Response: I did not work on any cases with Mr. Redick at any time. My contact with him after my board service concluded was limited to sporadic social contacts at bar association events.

- 10. Describe in detail your views on the Free Exercise and Establishment Clauses of the First Amendment of the U.S. Constitution. Do you understand those clauses to ever require the affirmative accommodation of religious practices and beliefs? Do those protections extend to the workplace?**

Response: The Supreme Court has addressed the scope of protections in the Establishment and Free Exercise Clauses in several cases. The Establishment Clause has been interpreted by the Supreme Court to prohibit the establishment of a national religion or the preference of one religion over another. In Lemon v. Kurtzman, 403 U.S. 602 (1971) the Supreme Court applied a three-part test to determine if a governmental practice satisfies the Establishment Clause. The governmental practice must: 1) have a clearly secular purpose; 2) that neither advances nor inhibits religion; and 3) avoids excessive governmental entanglement with religion. 403 U.S. at 612-13. The Free Exercise Clause has been interpreted by the Supreme Court to prohibit any governmental regulation of religious beliefs, which includes compelling a religious belief or penalizing individuals who hold a particular religious belief. Sherbert v. Verner, 374 U.S. 398, 402 (1963). An affirmative accommodation of sincerely held religious beliefs is required in the workplace under Title VII of the Civil Rights Act. Dewey v. Reynolds Metal Co., 402 U.S. 689 (1971); Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977). If confirmed, I will apply Supreme Court and Sixth Circuit Court of Appeals decisions when deciding cases involving the Free Exercise or Establishment Clauses and workplace accommodations.

- 11. If confirmed as a judge for the Middle District of Tennessee, will you ensure that all cases brought before you are managed and disposed of in a timely manner, including those cases where you may have personal disagreements with the law? If so, please describe affirmative steps that you would take to ensure that all cases receive timely review.**

Response: If I am fortunate enough to be confirmed I will engage in active case management so that cases reach a resolution by settlement or trial. As a trial lawyer, I know that deadlines motivate lawyers to act and work on their cases. I plan to set case deadlines in a scheduling

order to govern case progression. Those deadlines will be enforced so that cases don't linger. I plan to work diligently, as I already do in my practice, to rule on discovery or dispositive motions promptly, so that the litigants can prepare for trial. As appropriate, I will encourage mediation to resolve a case without trial. To ensure timely action on cases I will maintain a chamber's matrix of cases with pending motions, cases ready for trial and cases that may need periodic status updates due to their complexity. I do not believe that any personal views about a case have a place in the judicial decision making process.