

Nomination of Dabney Friedrich to the U.S. District Court for the District of Columbia
Questions for the Record
Submitted August 1, 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: A district court is always bound by Supreme Court precedent and the precedent of the relevant circuit court. A district court may not depart from Supreme Court precedent. A district court may only depart from the relevant circuit court's precedent if that precedent has been overridden by a subsequent decision of the Supreme Court.

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

Response: As noted above, a district court is always bound by Supreme Court precedent and the precedent of the relevant circuit court. There may, however, be rare occasions where a district court would note alternative holdings of other circuits facing the same issue. This does not, however, alleviate the responsibility of the district court to follow the relevant circuit court precedent.

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 read Justice Gorsuch's textbook and I have not studied the basis for those designations. However characterized, *Roe v. Wade* and all other precedent of the Supreme Court is binding on district courts. If I am confirmed, I will adhere to such precedent.

- b. **Is it settled law?**

Response: Like all other decisions of the Supreme Court, *Roe v. Wade* is binding 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: Like all other decisions of the Supreme Court, *Obergefell v. Hodges* is binding precedent.

b. On 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 read the Texas Supreme Court’s decision. I do not believe it would be appropriate for me to offer an opinion as to a matter that might come before me if I am confirmed. If the matter were to come before me, I would carefully review the parties’ arguments and all relevant precedent including *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: I do not believe it would be appropriate for me to offer an opinion as to a matter that might come before me if I am confirmed. If I am confirmed, I will adhere to *Heller* and all precedent established by the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

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

Response: I do not believe it would be appropriate for me to offer an opinion as to the contours of the *Heller* decision and its implications other than to note that the Court’s decision states that “[n]othing 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.” *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008).

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

Response: I am not sufficiently familiar with decisions of the Supreme Court on this topic pre-dating *Heller* to offer an opinion. If I am confirmed, I will adhere to *Heller* and all precedent of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

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: I do not believe it would be appropriate for me to offer an opinion as to a matter that might come before me if I am confirmed. If I am confirmed, I will adhere to *Citizens United v. FEC* and all precedent of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

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

Response: I do not believe it would be appropriate for me to offer an opinion as to a matter that might come before me if I am confirmed. If I am confirmed, I will adhere to *Citizens United v. FEC* and all precedent of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

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

Response: I do not believe it would be appropriate for me to offer an opinion as to a matter that might come before me if I am confirmed. If I am confirmed, I will adhere to all precedent of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

6. Federal law generally requires federal district court judges to live in the district where they have been appointed. The District Court for the District of Columbia is one of the few exceptions. (28 U.S.C. § 134)

I understand that Representative Eleanor Holmes Norton, who represents the District of Columbia, was not consulted on nominations to the D.C. federal district court, including yours. During the last three Administrations, she was consulted. And during the Obama and Clinton Administrations, she was not just consulted but also recommended candidates to the White House who were then nominated by the President. Her candidates were either District residents or committed to relocating to the District.

It is my understanding that you have recently relocated to the D.C. area.

If confirmed, do you plan to live in the District of Columbia during your tenure as a federal district judge for the District of Columbia?

Response: I have no present plans to relocate. If I am confirmed I will adhere to all relevant statutes regarding the residence of district court judges.

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

Response: I received these questions on August 1, 2017. I reviewed the questions, conducted research, and drafted answers. I then shared the answers with the Department of Justice's Office of Legal Policy ("OLP"). After speaking with attorneys in OLP, I made revisions, finalized my responses, and authorized OLP to submit my responses.