

**Nomination of Greg Guidry to the Eastern District of Louisiana
Questions for the Record
Submitted February 20, 2019**

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 lower courts to depart from Supreme Court precedent?

It is never appropriate for a lower court to depart from Supreme Court precedent.

b. Do you believe it is proper for a district court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?

No.

c. When, in your view, is it appropriate for a district court to overturn its own precedent?

The district court should overturn its own precedent when the U.S. Supreme Court or the relevant Circuit Court either determines the lower court's ruling is in error or sets a new precedent.

d. When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?

Only the Supreme Court may determine when to overturn its own 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 text book 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 Law of Judicial Precedent, Thomas West, p. 802 (2016).) 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”? Do you agree it is “superprecedent”?

I am not familiar with the terms “super-stare decisis” and “superprecedent,” but if I am confirmed as a district court judge, I will follow *Roe v. Wade*, which has been Supreme Court precedent for more than 40 years, as well as all other Supreme

Court and Fifth Circuit precedent.

b. Is it settled law?

Yes.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

Yes. In fact, I have specifically acknowledged that *Obergefell v. Hodges*, 135 S.Ct. 2584, 192 L.Ed.2d 609, 2015 WL 2473451 (2015), is binding law on me and the Supreme Court of Louisiana in *Costanza v. Caldwell*, 2014-2090 (La. 7/17/15), 167 So.3d 619, 623-24 (Guidry, J., additionally concurring and assigning reasons).

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?

As a federal district court judicial nominee, it would be inappropriate for me to comment on Justice Stevens's dissent. If confirmed, I will apply *Heller* and all other Supreme Court precedent.

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

As a federal district court judicial nominee, it would be inappropriate for me to comment on issues that potentially could come before me as a district court judge.

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

Heller provides that "nothing in our precedents forecloses our adoption of the original understanding of the Second Amendment." 554 U.S. at 625.

5. You were the only dissenting justice in the 2013 Louisiana Supreme Court case *Louisiana Federation of Teachers v. State*, which struck down Louisiana's school voucher system. The majority found that the Louisiana Constitution prohibited certain per-pupil funding from being diverted to nonpublic schools.

You, however, appeared to disagree that such funding was being diverted to nonpublic schools because it "presumably reverts back to the control of the state" once students no

longer attend a public school within a district. (*Louisiana Fed'n of Teachers v. State*, 118 So. 3d 1033 (2013))

Please identify what evidence or precedent you relied on in presuming that allocated per-pupil funding can revert back to state control.

My dissent in *Louisiana Federation of Teachers v. State* is self-explanatory. The Supreme Court of Louisiana is a court of last resort, and we were called upon to determine whether the legislature's action with regard to funding education of Louisiana students violated the Louisiana Constitution of 1974. I therefore reviewed La. Acts 2012, No. 2 and Senate Concurrent Resolution No. 99, along with the Minimum Foundation Program (MFP), in light of La. Const. art. VIII, § 13(B). In my view, the record showed that, once a student leaves a school district, the district is no longer entitled to the state's share of the MFP for that student, and thus the district's state share of the MFP is removed from the MFP allocation to that district. Further, there was no showing the state's share for that student, who is no longer in a public school system, is reallocated within the MFP to other school districts. Accordingly, I saw no constitutional limitation in Art. VIII, § 13(B) that would preclude the state from using the funds no longer dedicated to funding its share of Level 1 of the MFP to fund scholarships for eligible public school students who have been accepted to eligible non-public schools elsewhere within the MFP. As the majority in *Louisiana Federation of Teachers v. State* pointed out: "The determination of how to best provide for the education of children is not the role of this court in this matter. We defer that determination to those more learned in the fields of education and public policy. The court's role is to evaluate the law set forth in the constitution to determine whether the matters addressed by the legislature comply with the relevant constitutional provisions and 'not to legislate social policy on the basis of our own personal inclinations.'" 118 So.3d at 137, quoting *State v. Smith*, 99–0606, 99–2094, 99–2015, 99–2019, p. 11 (La.7/6/00), 766 So.2d 501, 510. I simply disagreed with the majority's reasoning and its holding that the legislature had failed to comply with the constitution.

6. In 2008, during your campaign for the Louisiana Supreme Court, the Louisiana Judicial Campaign Oversight Committee reportedly found that your campaign published misleading statements about another judge's record and that these statements violated Louisiana's code of judicial conduct. (*Mailer Violates Judicial Code; Board: Guidry Leaflet Uses False Statements*, TIMES PICAYUNE (Sept. 29, 2008))

a. Please detail the content of these statements.

Two flyers or mailers that were sent out on behalf of my campaign in 2008 were criticized as being false or misleading by the Louisiana Judicial Campaign Oversight Committee. The first mailer cited *Hamilton v. Royal Int'l Petroleum Corp.*, 2003-2660 (La. App. 1 Cir. 0/02/05), 906 So.2d 627, in which the elderly plaintiff's residence was sold at a tax sale to the defendant for \$71.68, consisting of \$27.09 in unpaid taxes, plus interest and costs. The plaintiff sought to annul the sale, asserting he had not been provided with proper notice. The trial court concluded the plaintiff had been afforded proper notice and upheld the sale. The court of appeal identified the issue before it as whether the tax collector was required to give a tax debtor the post-sale notice provided

in La. R.S. 47:2180 A(1)(b), dealing primarily with the debtor's right of redemption, when the notice requirement was enacted after the sale, but before the expiration of the redemption period on the property. Concluding the notice was required under these circumstances, the court of appeal majority reversed the judgment of the trial court and annulled the tax sale. My opponent dissented without reasons. The Supreme Court of Louisiana thereafter granted a writ of review, reversed the court of appeal, declining to give retroactive effect to the statutory amendment, and ultimately upheld the tax sale. *Hamilton v. Royal Int'l Petroleum Corp.*, 2005-0846 (La. 03/02/05), 934 So.2d 25.

The mailer attributed responsibility for the result in this case to my opponent. Although my opponent's dissenting position was upheld by the Supreme Court, the Louisiana Judicial Campaign Oversight Committee found that the mailer was in violation of Canon 7(B)(1)(d)(ii) of the Louisiana Code of Judicial Conduct.

The second mailer sent out by my campaign cited the First Circuit Court of Appeal's decision in *State v. Derrick Todd Lee*, 2004-0129 (La. App. 1 Cir. 04/06/04), 879 So.2d 173, a per curiam opinion by a three-judge panel of which my opponent was a member. In that case, an indigent capital murder defendant sought review of the trial court's refusal to issue a ruling on his pre-trial motion requesting funding for expert expenses. The per curiam opinion granted the defendant's writ application, and remanded the matter to the trial court for its reconsideration of the defendant's motion for expert expenses, either *in camera* or after an *ex parte* hearing, to determine whether the defendant had made a sufficient showing and, if so, the source of the funds for payment of those expenses.

The mailer attributed responsibility for the payment of defense costs to my opponent. The Louisiana Judicial Campaign Oversight Committee determined that the mailer was in violation of Canon 7(B)(1)(d)(ii) of the Louisiana Code of Judicial Conduct.

b. When and how did you first become aware of these statements?

I became aware of them in a general manner shortly before the Louisiana Judicial Campaign Oversight Committee commenced its review.

c. What steps did you take to address issuance of these statements by your campaign?

These mailers were created in the closing days of a heavily contested campaign. I specifically and unequivocally took full responsibility for the use of this campaign literature without any delay. A media consultant retained by my campaign had created them, and I had relied upon the facts as presented to me. I instructed the consultant to cease further distribution immediately, and, pursuant to my duty under Canon 7(B) of the Louisiana Code of Judicial Conduct, I took additional measures going forward to insure proper vetting of all mailers or communications from my campaign.

d. Did the Louisiana Judicial Campaign Oversight Committee investigate these statements or issue any findings? If so, what did the Committee find

regarding your role in the statements' publication? Please provide a copy of the Committee's investigation and findings.

Please refer to my answers in Questions 6(a) and (c) above.

7. In 2018, you joined your colleagues on the Louisiana Supreme Court in declining to review a decision from Louisiana's First Circuit Court of Appeal invalidating an executive order from Governor John Bel Edwards. (*Louisiana Dep't. of Justice v. Edwards*, 239 So.3d 824 (2018)) The executive order would have prohibited discrimination on the basis of sexual orientation and gender identity and would have required state contractors to include similar anti-discrimination provisions in their contracts. As a result, the lower court's decision stood, and the order was invalidated.

a. What was your reasoning for declining to review the lower court's decision?

Rule X of the Louisiana Supreme Court Rules guides the grant or denial of the Supreme Court's discretionary review. I did not find the case as presented was appropriate for the Court's discretionary review under the considerations set forth in Rule X, § 1(a).

b. Is there a state interest in preventing discrimination, including discrimination based on sexual orientation or gender identity?

It would not be appropriate for me to comment on matters that may come before me as a federal district court judge. That being said, I will follow all precedent of the Supreme Court and the Fifth Circuit.

8. In 1984, you published a student note criticizing Louisiana's physician-patient privilege statute and suggesting the judiciary should be given the ability to circumvent that privilege in certain circumstances. Specifically, you discussed a case in which a husband sought access to his wife's medical records in order to use evidence of an alleged abortion against her in divorce proceedings and stated that the trial court's decision that the records were privileged was an "inequitable" and "harsh" result. (Greg G. Guidry, Note, *The Louisiana Supreme Court and the Physician Patient Privilege: Arsenaux v. Arsenaux*, 44 La. L. Rev. 1813 (1984))

Do you still believe that the judiciary should be given the flexibility to undermine physician-patient privilege, even when it would interfere with a woman's right to privacy in her reproductive choices?

The issue presented in *Arsenaux v. Arsenaux* was whether the husband, who had undergone a vasectomy, was entitled to the medical records of the wife to prove adultery as a ground for divorce. In my case note for the Louisiana Law Review, I pointed out that the majority of the court felt constrained by the language of the health care provider statute and had correctly adopted a literal interpretation of the statute as enacted by the legislature, rather than judicially create any additional exceptions to the medical records

privilege. 44 La. L. Rev. at 1819. It was properly within the legislature's purview to provide any further guidance to the courts to resolve actions in which an essential issue is the existence of a mental or physical condition or ailment. *Id.* at 1819-20.

9. 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?

It would not be appropriate for me to comment on matters that may come before me as a district court judge. That being said, I will follow all precedent of the Supreme Court and the Fifth Circuit.

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

Please see my answer to Question 9(a).

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

Please see my answer to Question 9(a).

10. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), White House Counsel Don McGahn told the audience about the Administration's interview process for judicial nominees. He said: "On the judicial piece ... one of the things we interview on is their views on administrative law. And what you're seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years..."

a. Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?

No.

b. Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?

No.

c. What are your “views on administrative law”?

I intend to follow all binding precedent in administrative law matters.

11. You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 2000, including as an Advisory Board Member for the New Orleans Chapter since 2009. The Federalist Society’s “About Us” webpage explains the purpose of the organization as follows: “Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law.” It says that the Federalist Society seeks to “reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community.”

a. Could you please elaborate on the “form of orthodox liberal ideology which advocates a centralized and uniform society” that the Federalist Society claims dominates law schools?

I did not draft this statement and, therefore, cannot comment on its meaning.

b. How exactly does the Federalist Society seek to “reorder priorities within the legal system”?

Please see my answer to Question 11(a).

c. What “traditional values” does the Federalist society seek to place a premium on?

Please see my answer to Question 11(a).

d. Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court?

During the course of this process, I have had general discussions with many members of the legal community about my possible nomination, including members of the Federalist Society.

e. What does your role as an Advisory Board Member entail?

This is an honorary position that does not entail any duties.

12. When is it appropriate for judges to consider legislative history in construing a statute?

It is a settled rule of statutory construction that, if the language of the statute is unclear or ambiguous, or produces an absurd result, the court may look to the legislative history to determine legislative intent. *See, e.g., United States v. Kay*, 359 F.3d 738, 742-43 (5th Cir. 2004) (“[T]he starting point for interpreting a statute is the language of the statute itself.” When construing a criminal statute, we “must follow the plain and unambiguous meaning of the statutory language.” Terms not defined in the statute are interpreted according to their “ordinary and natural meaning ... as well as the overall policies and objectives of the statute.” Furthermore, “a statute must, if possible, be construed in such fashion that every word has some operative effect.” Finally, we have found it “appropriate to consider the title of a statute in resolving putative ambiguities.” If, after application of these principles of statutory construction, we conclude that the statute is ambiguous, we may turn to legislative history. For the language to be considered ambiguous, however, it must be “susceptible to more than one reasonable interpretation” or “more than one accepted meaning.”)(footnotes omitted).

13. At any point during the process that led to your nomination, did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

No.

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

I received Questions for the Record from six Senators, reviewed all of the questions, and drafted responses. I then requested feedback from the Office of Legal Policy at the U.S. Department of Justice. I revised my answers after receiving feedback, but the answers to each question are my own.

**Nomination of Greg Gerard Guidry to the
United States District Court for the Eastern District of
Louisiana Questions for the Record
Submitted February 20, 2019**

QUESTIONS FROM SENATOR WHITEHOUSE

1. In 2000, as you were running for a seat on the Twenty-Fourth Judicial District Court, your opponent accused you of violating the Hatch Act. As reported in the *Times Picayune* you received endorsements from the Jefferson Parish President and the District Attorney before you resigned from the U.S. Attorney's Office.

- a. What is your understanding of the Hatch Act?

The Hatch Act governs the political activities of federal government employees.

- b. Why were you accused of violating the Hatch Act?

I was never informed by the U.S. Attorney's office or the Department of Justice that any complaint had been filed. Apparently, something may have been filed after I left federal employment in early 2000. I have never seen any such complaint, and I have no knowledge of who might have filed a complaint. Obviously, I cannot speculate on matters of which I am unaware. I was always careful to ensure that my activities were in compliance with the Hatch Act, and I did not solicit or receive endorsements from anyone while I was a federal employee.

- c. Were you ever a candidate for nomination or election to a public office while a federal employee?

No, I had resigned from the U.S. Attorney's Office prior to becoming a candidate for a seat on the Twenty-Fourth Judicial District Court.

- d. Have you ever used your official title or position while engaged in political activity?

No, during my tenure as a federal employee, I was careful to ensure that my activities were in compliance with the Hatch Act.

- e. Did you ever engage in any political activity while on duty, in any federal room or building, while wearing a uniform or official insignia, or using any federally owned or leased vehicle?

No.

- f. Did you ever use your official authority or influence to interfere with or affect the result of an election?

No.

2. During your initial run for the Louisiana Supreme Court, the *Times-Picayune* reported that you were called “the business establishment candidate in the race because [your] campaign has drawn financial support from all four political action arms of the Louisiana Association of Business and Industry”

- a. Why do you believe you drew financial support from all four political action arms of the Louisiana Association of Business and Industry?

I have never held myself out as a candidate for any particular interest. I have drawn support for my judicial campaigns from many different and divergent individuals and groups. I believe that my supporters recognized that I am a fair and equitable judge, who decides the cases before me without favor or bias. Beyond that, I cannot speculate on the reasons for the support.

- b. Do you believe that financial contributions to campaigns for judicial office have the potential to harm the judiciary and its reputation as an apolitical entity?

The Code of Judicial Conduct in Louisiana mandates that a judge perform his or her judicial duties “without bias or prejudice.” Canon 3(A)(4), Louisiana Code of Judicial Conduct (2018). I have conducted myself in accordance with that canon throughout my tenure as an elected judge at the district court, the appellate court, and the supreme court. So long as a judge or judicial candidate abides by the Code of Judicial Conduct, as well as state and federal constitutional due process guarantees, the reputation of the judiciary will be strengthened. “An independent and honorable judiciary is indispensable to justice in our society.” Canon 1, Louisiana Code of Judicial Conduct (2018).

3. Your first Louisiana Supreme Court campaign was found to have published a leaflet that violated judicial ethics rules. The Judicial Campaign Oversight Committee ultimately found that at least two statements in the leaflet were not “supported by the facts” and misrepresented another state appeals court judge’s record. The Oversight Committee announced that it believed the statements in the leaflet were in violation of the state’s code of judicial conduct. Please explain why a pamphlet put out by your campaign contained inaccuracies constituting a violation of the code of judicial conduct.

Two flyers or mailers that were sent out on behalf of my campaign in 2008 were criticized as being false or misleading by the Louisiana Judicial Campaign Oversight Committee. These mailers were created in the closing days of a heavily contested campaign. When these flyers were brought to my attention, I specifically and unequivocally took full responsibility for the use of this campaign literature without any delay. A media consultant retained by my campaign had created them, and I had relied upon the facts as presented to me. I

instructed the consultant to cease further distribution immediately, and, pursuant to my duty under Canon 7(B) of the Louisiana Code of Judicial Conduct, I took additional measures going forward to insure proper vetting of all mailers or communications from my campaign.

4. You have been an active member in the Federalist Society. Do you think it is appropriate for judges to actively maintain membership in a group with a stated ideological agenda?

- a. If confirmed, do you plan to remain an active participant in the Federalist Society?

I intend to remain a member. However, if confirmed, I will follow the Code of Conduct for United States Judges.

- b. Have you had contacts with representatives of the Federalist Society in preparation for your confirmation hearing?

No.

5. 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?

Yes, I agree with Chief Justice Roberts. A judge should perform his or her judicial duties without bias or prejudice for one side or the other.

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

A judge should apply the law to the facts of the case before him or her, without regard to matters outside the record.

- 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?

Under Federal Rule of Civil Procedure Rule 56(a), summary judgment shall be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” “If the moving party meets that burden, the non-moving party must show the existence of a

genuine issue for trial, and the evidence and the inferences must be viewed in the light most favorable to the non-movant.” *HSBC Bank USA, N.A. as Trustee for Merrill Lynch Mortgage Loan v. Crum*, 907 F.3d 199 (5th Cir. 2018). If confirmed, I will follow precedent from the Fifth Circuit and the Supreme Court in ruling on a motion for summary judgment under Rule 56.

6. 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?

While a judge should have a sense of empathy for all parties who come before him or her, the judge must nevertheless apply the law to the facts of the case without favor or bias. I have always treated litigants appearing before me with courtesy and dignity, and I hope when they leave my court they feel they have been given a fair opportunity to be heard.

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

Please see my response to Question 6(a) above.

- 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?

Please see my response to Question 6(a) above.

7. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No. If confirmed as a federal district court judge, I will follow the precedent of the Fifth Circuit and the Supreme Court.

8. Is it ever appropriate for judges to raise issues not directly presented by the litigants? When?

Very rarely in specific instances a judge must address issues not directly raised by the litigants. For example, the judge must determine that he or she has appropriate jurisdiction over the case, whether the issue is raised by the parties or not.

9. If confirmed, what weight would you give to Supreme Court dicta in reaching your decisions?

I would give no weight to dicta, only the actual holding of the case.

**Nomination of Greg Gerard Guidry
United States District Court for the Eastern District of Louisiana
Questions for the Record
February 20, 2019**

QUESTIONS FROM SENATOR BLUMENTHAL

1. In 2018, you joined the Louisiana Supreme Court majority in *Louisiana Department of Justice v. Edwards*, declining to review a lower court decision that invalidated the Governor’s executive order. The Governor’s executive order attempted to protect the rights of LGBTQ individuals in the state government by prohibiting discrimination on the basis of sexual orientation and gender identity.

- a. **Recently, the Second and Seventh Circuits reached conclusions that discrimination based upon sexual orientation is a form of sex discrimination under Title VII. The Sixth circuit reached a similar conclusion in a case brought by transgendered people involving discrimination based upon gender identity. Do you agree with these holdings?**

Pursuant to Canons 2, 3(a), and 5 of the Code of Conduct for United States Judges, it would not be appropriate for me, as a district court judicial nominee, to comment on potential issues that could come before me as a district court judge. If confirmed, I will follow the precedent set by the Fifth Circuit and the Supreme Court on these issues.

- b. **In your opinion, should discrimination based upon sexual orientation be considered a form of sexual discrimination under Title VII?**

Please see my answer to Question 1(a) above.

2. In 2008, you were the only judicial candidate nationwide that was endorsed by the anti-choice, anti-LGBTQ group, Family Research Council (FRC). A local newspaper reported that, “David Nammo, executive director of FRC Action, said he had several conversations with Guidry and that they considered Guidry’s election crucial to the future of the Louisiana court.”

The FRC has been designated a hate group by the Southern Poverty Law Center for its anti-LGBTQ rhetoric and activities. FRC also advocates for the extreme position of fetal “personhood,” and refers to *Roe v. Wade* as a “grave error.”

- a. **Did you seek out the endorsement of FRC?**

I do not recall seeking such an endorsement.

- i. **If so, why?**

b. What was the process for gaining FRC's endorsement?

Please see my answer to Question 2(a).

c. What did you discuss in your conversations with FRC? Please be specific as to any discussions about reproductive or LGBTQ rights.

Please see my answer to Question 2(a).

d. Are you aware that FRC has been designated a hate group by the Southern Poverty Law Center because of its anti-LGBTQ activism?

I am not aware of the designations made by the Southern Poverty Law Center. If confirmed, I will follow the precedent of the Fifth Circuit and the Supreme Court. In fact, I have specifically acknowledged that *Obergefell v. Hodges*, 135 S.Ct. 2584, 192 L.Ed.2d 609, 2015 WL 2473451 (2015), is binding law on me and the Supreme Court of Louisiana in *Costanza v. Caldwell*, 2014-2090 (La. 7/17/15), 167 So.3d 619, 623-24 (Guidry, J., additionally concurring and assigning reasons).

e. Do you agree with FRC's view that *Roe v. Wade* was a "grave error?"

Pursuant to Canons 2, 3(a), and 5 of the Code of Conduct for United States Judges, it would not be appropriate for me, as a district court judicial nominee, to comment on the correctness of the Supreme Court's decision. However, *Roe v. Wade* is binding Supreme Court precedent, and, if confirmed, I will follow the precedent set by the Fifth Circuit and the Supreme Court on these issues.

Questions for the Record for Greg Gerard Guidry
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

No.

b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

No.

2. A 2008 story in the Times Picayune reported that you were criticized for not always “toe[ing] the ethical line.” For example:

During your run for district court judge, you were accused of violating the Hatch Act when you began your campaign and accepted endorsements before resigning as an Assistant United States Attorney.

While serving on Louisiana’s Fifth Circuit Court of Appeal, you used your court stationary to solicit volunteers to serve on your Supreme Court campaign finance committee.

Your first Louisiana Supreme Court campaign was found to have published a leaflet that violated judicial ethics.

This is a disturbing pattern.

a. What can you tell us about these incidents? Do you agree that you violated ethical rules in each case?

In early 2000, I resigned from the Office of the United States Attorney for the Eastern District of Louisiana to run for a seat on the Twenty-Fourth Judicial District Court in Jefferson Parish. The Hatch Act governs the political activities of federal government employees. No complaints were made against me during my tenure as a federal employee. Apparently someone did make a complaint after I had left federal employment. I do not know who made the complaint. I was not made aware of it at the time it may have been made. I was never contacted by the Department of Justice concerning any such complaint. Moreover, the allegation was unfounded, because I did not engage in unauthorized political activity while I was an Assistant U.S. Attorney, and I did not violate the Hatch Act at any time during my employment with the federal government.

The Louisiana Code of Judicial Conduct prohibits judicial candidates from personally soliciting campaign funds. Canon 7(A), Louisiana Code of Judicial Conduct (2018). The Code does allow judicial candidates to ask volunteers to serve on a campaign committee, and that committee may solicit funds on behalf of the candidate. Canon 7(D), Louisiana Code of Judicial Conduct (2018). During my 2008 campaign, my opponent in the race -- in an advertisement that was later deemed to be false -- accused me of using my official court stationery to solicit campaign funds. The reporter in the referenced article apparently picked up on that false claim. In reality, the stationery was not official court stationery, but was designed, created, printed, and distributed without public funds. Moreover, the letter was not a solicitation, but an invitation for volunteers to serve on my campaign committee. The letters clearly stated they were paid for and printed at private expense. These actions do not constitute an ethical breach.

Two flyers or mailers that were sent out on behalf of my campaign in 2008 were criticized as being false or misleading by the Louisiana Judicial Campaign Oversight Committee. These mailers were created in the closing days of a heavily contested campaign. When these flyers were brought to my attention, I specifically and unequivocally took full responsibility for the use of this campaign literature without any delay. A media consultant retained by my campaign had created them, and I had relied upon the facts as presented to me. I instructed the consultant to cease further distribution immediately, and, pursuant to my duty under Canon 7(B) of the Louisiana Code of Judicial Conduct, I took additional measures going forward to insure proper vetting of all mailers or communications from my campaign.

- b. In your opinion, should someone with a history of violating ethical rules be confirmed to a lifetime appointment on the federal bench? Why or why not?

I disagree with the characterization that I have a history of violating ethical rules. As explained above, only the two flyers mailed during my campaign in 2008 were deemed to have been improper. Once these were brought to my attention, I immediately took full responsibility and imposed specific measures to prevent anything similar from happening again. No discipline was ever imposed as a result of the flyers. In fact, nothing similar has happened in my career either before or after these mailers. If confirmed, I will maintain the highest standards of ethical conduct and comply with the Code of Conduct for United States Judges.

Nomination of Greg Gerard Guidry
United States District Court for the Eastern District of Louisiana
Questions for the Record from Senator Cory Booker
Submitted February 20, 2019

1. When you ran for judge in 2000, the *Times-Picayune* described your platform as focusing on “sentencing convicted criminals quickly and setting high bonds for people charged with serious drug charges or violent crimes.”¹ The newspaper also said you wanted to “assure the public that courtrooms aren’t ‘revolving doors’ for criminals.”²

a. You have served on various Louisiana Courts for almost 20 years. As a judge, what did you do to “assure the public that courtrooms aren’t ‘revolving doors’ for criminals”?

As a trial judge, I managed my docket efficiently to conduct trials and impose sentences without undue delay. I also applied the law with regard to fixing the amount of bail fairly, but not excessively, to ensure not only the presence of the accused but also the safety of any other person and the community, as provided for in La. Code Crim. Proc. art. 316. As an appellate judge and a justice on the Louisiana Supreme Court, I adhered to those same principles when reviewing actions of the lower courts. I also endeavored to afford defendants appellate review and to render my decisions without undue delay.

b. Did any of your efforts include support or advocacy for re-entry programs designed to assist formerly incarcerated people with obtaining the necessary skills and tools to re-acclimate and adjust to life outside of prison?

Yes.

c. Please describe what offenses constituted “serious drug charges” when you set high bonds for criminal defendants.

The factors in the fixing of bail are set forth in La. Code Crim. Proc. art. 316, and include the seriousness of the offense charged, including whether the offense is a crime of violence or involves a controlled dangerous substance, the previous criminal record of the defendant, and the nature and seriousness of the danger to any other person or the community that would be posed by the defendant’s release.

2. In 2018, you joined a majority of the Louisiana Supreme Court in rejecting Governor John Bel Edwards’ effort to issue an executive order that would have prohibited the state government from discriminating against people on the basis of sexual orientation and gender identity.³ No written opinion was given for the denial of the petition.

¹ Keith O’Brien, *Jefferson Parish judge hopefuls stress resumes*, TIMES-PICAYUNE (Sep. 21, 2000).

² *Id.*

³ *Louisiana Dep’t. of Justice v. Edwards*, 2018 WL 1443842 (2018).

- a. What was the legal rationale behind denying the petition for a writ of certiorari?

Rule X of the Louisiana Supreme Court Rules guides the grant or denial of the Supreme Court's discretionary review. I did not find the case, as presented, was appropriate for the Court's discretionary review under the considerations set forth in Rule X, § 1(a).

- b. Do you believe it is wrong to discriminate against someone on the basis of their sexual orientation or gender identity?

It would not be appropriate for me to comment on matters that may come before me as a federal district court judge. That being said, I will follow all precedent of the Supreme Court and the Fifth Circuit.

3. In 2016, you dissented in *Shedherd v. Shedler*, in which the majority of the Louisiana Supreme Court overturned a 1998 state law that prohibited people with felonies from running for office for 15 years after their sentencing.⁴ The majority of the court declared the amendment invalid because proposed amendment the legislature voted on contained different language than what Louisiana citizens voted on.⁵ You dissented reasoning that the electorate and legislature were "of a single mind that persons in the plaintiff's position should be prohibited from seeking elective office."⁶

- a. Do you consider yourself a textualist?

I do not categorize myself as either a textualist or an originalist; however, as a judge I have always sought to apply the laws as written by the legislative body to the facts of the case before me. If confirmed, I would apply the laws as written by the Congress and the precedents of the Fifth Circuit and the Supreme Court.

- b. If you are a textualist, how do you square your opinion in this case with the tenets of textualism?

Please refer to my answer in Question 3(a) above. In the case referenced, *Shepherd v. Schedler*, 2015-1750 (La. 1/27/15), 209 So.3d 752, the tenets of textualism or originalism would not have affected my analysis or the outcome of the case. 209 So.3d at 774 (Guidry, J., dissenting).

- c. Do you consider yourself an originalist?

Please refer to my answer in Question 3(a) above.

- d. What role do you think legislative intent and legislative history should play in statutory interpretation?

⁴ 209 So.3d 752 (2016).

⁵ *Id.* at 773.

⁶ *Id.* at 775.

It is a settled rule of statutory construction that, if the language of the statute is unclear or ambiguous, or produces an absurd result, the court may look to the legislative history to determine legislative intent. *See, e.g., United States v. Kay*, 359 F.3d 738, 742-43 (5th Cir. 2004) (“[T]he starting point for interpreting a statute is the language of the statute itself.” When construing a criminal statute, we “must follow the plain and unambiguous meaning of the statutory language.” Terms not defined in the statute are interpreted according to their “ordinary and natural meaning ... as well as the overall policies and objectives of the statute.” Furthermore, “a statute must, if possible, be construed in such fashion that every word has some operative effect.” Finally, we have found it “appropriate to consider the title of a statute in resolving putative ambiguities.” If, after application of these principles of statutory construction, we conclude that the statute is ambiguous, we may turn to legislative history. For the language to be considered ambiguous, however, it must be “susceptible to more than one reasonable interpretation” or “more than one accepted meaning.”)(footnotes omitted).

4. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.⁷ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.⁸ These shocking statistics are reflected in our nation’s prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.⁹ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.¹⁰

- a. Do you believe there is implicit racial bias in our criminal justice system?

While I have not studied the issue of racial disparity in the criminal justice system, I personally have treated the defendants, the prosecutors, the victims, and the witnesses who have appeared before me, equally and without bias or prejudice as to race or ethnicity. I certainly believe the issue raised in this question should continue to be a focus of research and discussion by the legislative and executive branches of government.

- b. Do you believe people of color are disproportionately represented in our nation’s jails and prisons?

Please see my answer to Question 4(a) above.

⁷ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

⁸ *Id.*

⁹ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

¹⁰ *Id.*

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

Please see my answer to Question 4(a) above.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.¹¹ Why do you think that is the case?

Please see my answer to Question 4(a) above.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.¹² Why do you think that is the case?

Please see my answer to Question 4(a) above.

- f. What role do you think federal appeals judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

Please see my answer to Question 4(a) above.

5. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.¹³ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.¹⁴

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

As I have not studied the effect of incarceration rates on the rates of crime, I cannot comment.

¹¹ U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

¹² Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

¹³ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

¹⁴ *Id.*

- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

Please see my response to Question 5(a) above.

6. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

The demographic diversity of the judicial branch is an issue for the President and the Senate. However, I am in favor of diversity.

7. Do you believe that *Brown v. Board of Education*¹⁵ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

As a district court judicial nominee, it is inappropriate for me to comment on the correctness *vel non* of a Supreme Court decision. *See* Code of Conduct for United States Judges, Canons 2, 3(a), and 5. That being said, I recognize the overwhelming consensus of the legal community that the Supreme Court in *Brown v. Board of Education* rightly overruled its earlier decision in *Plessy v. Ferguson*. I will certainly follow the precedent of the United States Supreme Court in *Brown v. Board of Education*.

8. Do you believe that *Plessy v. Ferguson*¹⁶ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

The Supreme Court unanimously overruled *Plessy v. Ferguson* in *Brown v. Board of Education*. I believe the Supreme Court was definitive in its statement that *Plessy* was incorrectly decided. Otherwise, please see my response to Question 7 above.

9. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

No.

10. President Trump has stated on Twitter: "We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came."¹⁷ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

I would afford all petitioners every aspect of due process required by law. If confirmed, I will fairly adjudicate all claims that come before me.

¹⁵ 347 U.S. 483 (1954).

¹⁶ 163 U.S. 537 (1896).

¹⁷ Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

Questions for the Record from Senator Kamala D. Harris
Submitted February 20, 2018
For the Nomination of Greg Guidry
to the U.S. District Court for the Eastern District of Louisiana

1. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

a. **What is the process you would follow before you sentenced a defendant?**

I would follow all of the procedures and practices set forth in the Sentencing Guidelines, the Federal Rules of Criminal Procedure, and other relevant statutes, plus any relevant and binding case law. I would review pre-sentencing memoranda, any investigatory reports, and the factors enunciated in 18 U.S.C. § 3553(a), and I would consider the arguments of counsel, statements from the defendant, the victim, and/or victim's family to evaluate each case thoroughly and independently.

b. **As a new judge, how do you plan to determine what constitutes a fair and proportional sentence?**

In addition to drawing upon my 18 years of judicial experience, I would look to federal sentencing guidelines, review the sentences that have been imposed within my district and approved by the Fifth Circuit and Supreme Court, and incorporate the factors discussed in 1(a) to reach a fair and proportional sentence.

c. **When is it appropriate to depart from the Sentencing Guidelines?**

Federal sentencing guidelines are not mandatory, and careful consideration of all relevant factors in a particular case may require departure from the sentence recommended by the Sentencing Guidelines.

- d. Judge Danny Reeves of the Eastern District of Kentucky—who also serves on the U.S. Sentencing Commission—has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.¹

i. **Do you agree with Judge Reeves?**

I am not familiar with Judge Reeves's work in this area.

ii. **Do you believe that mandatory minimum sentences have provided for a more equitable criminal justice system?**

¹ <https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf>

The issue of mandatory minimum sentencing is within the purview of Congress; it is not a question for the judiciary. As a district court judicial nominee, it would not be appropriate for me to comment.

- iii. **Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.**

Please see my answer to Question 1(d)(ii).

- iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.² **If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

1. **Describing the injustice in your opinions?**

My judicial opinions regarding sentencing would include a detailed description of the underlying facts and all applicable considerations, but I would impose any mandatory minimum sentence required by law, as per Congress's mandate.

2. **Reaching out to the U.S. Attorney and other federal prosecutors to discuss their charging policies?**

The decision regarding the crime charged is for the Executive Branch.

3. **Reaching out to the U.S. Attorney and other federal prosecutors to discuss considerations of clemency?**

Considerations of clemency are for the Executive Branch.

- e. 28 U.S.C. Section 994(j) directs that alternatives to incarceration are "generally appropriate for first offenders not convicted of a violent or otherwise serious offense." **If confirmed as a judge, would you commit to taking into account alternatives to incarceration?**

If confirmed, I will follow the provisions of 28 U.S.C. § 994(j).

² See, e.g., "Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose," NY Times, July 28, 2014, <https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>

2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

a. **Does a judge have a role in ensuring that our justice system is a fair and equitable one?**

Yes. If confirmed, I will take an oath to “administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me ... under the Constitution and laws of the United States.” 28 U.S.C. § 453. Throughout my tenure as a state district court judge, appellate court judge, and a supreme court justice I have endeavored to treat all litigants, attorneys, and witnesses who have appeared before me with dignity and courtesy, and to render my judicial decisions without bias or prejudice. Canon 3(A)(4), Louisiana Code of Judicial Conduct (2018).

b. **Do you believe there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

While I have not studied the issue of racial disparity in the criminal justice system, I personally have treated the defendants, the prosecutors, the victims, and the witnesses who have appeared before me, equally and without bias or prejudice as to race or ethnicity. I certainly believe the issue raised in this question should continue to be a focus of research and discussion by the legislative and executive branches of government.

3. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

a. **Do you believe it is important to have a diverse staff and law clerks?**

Yes.

b. **Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?**

I have always given serious consideration to hiring qualified minorities and women for positions of power or supervisory positions, and will continue to do so.