

Senator Vitter
Questions for the Record

LaShann Moutique DeArcy Hall,
Nominee, U.S. District Judge for the Eastern District of New York

- 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 *Nat'l Labor Relations Bd. v. Noel Canning*, the United States Supreme Court concluded that "the phrase 'the recess' applies to both intra-session and inter-session recesses. If a Senate recess is so short that it does not require the consent of the House, it is too short to trigger the Recess Appointments Clause. And a recess lasting less than 10 days is presumptively too short as well." 134 S. Ct. 2550, 2567 (2014) (internal citations and quotation marks omitted). If confirmed as a district court judge, I would faithfully apply this and any other binding precedent from the United States Supreme Court and the Second Circuit.

- 2. In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a 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*, the United States Supreme Court held that the standard to determine the validity of laws restricting abortions asks whether the law has the purpose or effect of imposing an "undue burden." 505 U.S. 833, 877 (1992). Undue burden is defined as "a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Id.* The question of whether requiring doctors who perform abortions to have admitting privileges imposes an undue burden under *Casey* is currently being litigated. If confirmed and presented with a case on this issue, I would apply any binding precedent and the legal standard articulated in *Casey* to the facts in the case.

- 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: *Roe v. Wade*, 410 U.S. 113 (1973), has not been overturned. Since *Roe*, the United States Supreme Court stated, in *Planned Parenthood v. Casey*, that "[r]egardless of whether exceptions are made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." 505 U.S. 833, 879 (1992). In *Gonzales v. Carhart*, the court held that the respondents had not demonstrated that the Partial Birth Abortion Act of 2003 was "void for vagueness, or that it imposes an undue burden on a woman's right to abortion based on its overbreadth or lack of a health exception." 550 U.S. 124, 168 (2007). If confirmed, I would faithfully follow these binding precedents as well as any other applicable precedent from the United States Supreme Court and the Second Circuit.

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: In *Baker v. Nelson*, the Minnesota Supreme Court held that a state law limiting marriage to persons of the opposite sex “does not offend the First, Eighth, Ninth, or Fourteenth Amendments to the United States Constitution.” 291 Minn. 310, 315, 191 N.W.2d 185, 187 (1971). The United States Supreme Court dismissed Baker’s appeal “for want of a substantial federal question.” *Baker v. Nelson*, 409 U.S. 810, 810 (1972). In *United States v. Windsor*, the United States Supreme Court held that the federal Defense of Marriage Act “is unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment of the Constitution,” 133 S. Ct. 2675, 2695 (2013), but recognized that, “subject to [constitutional] guarantees, regulation of domestic relations is an area that has long been regarded as a virtually exclusive province of the States.” *Id.* at 2691 (internal citations and quotation marks omitted). The United States Supreme Court recently granted certiorari in *Obergefell v. Hodges*, which addresses whether: (1) the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and (2) the Fourteenth Amendment requires a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. The United States Supreme Court’s decision in that case will be binding precedent for lower courts. If confirmed, I would faithfully follow the binding precedent of the United States Supreme Court and the Second Circuit.

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: I believe that judges must strictly adhere to the rule of law by applying precedent fairly and impartially. If confirmed, I would faithfully follow binding United States Supreme Court and Second Circuit precedent without regard to any personal views.

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: In *District of Columbia v. Heller*, the United States Supreme Court held that “the [District of Columbia’s] ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.” 554 U.S. 570, 635 (2008). In *McDonald v. City of Chicago*, the United States Supreme Court held that, “the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*.” 561 U.S. 742, 791 (2010). If confirmed and presented with a case on this issue, I would apply the law as articulated in *Heller* and *McDonald* and any other applicable binding precedent to the facts in the case before me.

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

Response: This issue has not yet been decided by the United States Supreme Court. If confirmed as a district court judge, I would be bound by the United States Supreme Court and Second Circuit precedent existing at the time of my determinations.