

**Nomination of Dominic Lanza to the
United States District Court for the District of Arizona
Questions for the Record
March 14, 2018**

QUESTIONS FROM SENATOR FEINSTEIN

1. In 2016, you served as a panelist for “*Miranda* at 50,” a discussion at an Arizona State Bar Convention. When asked what you would change about the law or application of the U.S. Supreme Court’s decision in *Miranda v. Arizona*, you responded, in part, that you would “[s]trengthen the presumption that, if the defendant is provided with advisements and agrees to talk, the resulting statements are voluntary.” You continued, “[w]e are seeing a lot of litigation about IQs, learning disabilities, and cultural backgrounds, which chips away at the *Miranda* Court’s attempt to establish an easily-administrable test that limits the need for case-by-case adjudication.” (Panelist, “*Miranda* at 50,” Arizona State Bar Convention, June 6, 2016)

How is the Supreme Court’s decision in *Miranda* inconsistent with taking account of a suspect’s IQ, learning disabilities, or cultural background in the application of the case’s protections?

It would be inappropriate for me, as a judicial nominee, to offer an opinion on how the *Miranda* opinion might apply in various factual scenarios because such questions are the subject of pending or reasonably anticipated litigation. Also, during the discussion at the state bar convention, I was simply attempting to address the differences between bright-line rules, which are prevalent some areas of criminal law, and other legal tests requiring case-by-case adjudication.

2. From 2006 to 2008, you served on the legal team representing General Motors and other automakers in their defense of a tort suit brought by the State of California for billions of dollars incurred as a result of climate change, contributed to by automobile emissions. You appeared on a Ninth Circuit brief arguing that California had improperly sought “to conscript the federal judiciary into its effort to breathe life into a sweeping new ‘global warming’ tort,” which you argued was a “quintessentially political question[]” that could not be adjudicated by the court. (Appellees’ Answer Brief, *California ex rel. Brown v. General Motors Corp.*, No. 07-16909 (9th Cir. 2008), 2008 WL 2131094)

What legal recourse do states have to recover monetary damages from companies whose actions specifically harm their residents and natural resources?

It would be inappropriate for me, as a judicial nominee, to offer an opinion on this topic because it addresses an issue that is the subject of pending or reasonably anticipated litigation.

3. In 2006, you were on the team that served as counsel to the Product Liability Advisory Council, which submitted a Supreme Court amicus brief in *Philip Morris USA v. Williams*. The brief argued that “products liability cases pose special dangers of arbitrary

punitive damage awards.” (Brief of the Product Liability Advisory Council as *Amicus Curiae* in Support of Petitioner, *Philip Morris v. Williams*, 549 U.S. 346 (2007))

a. What are the “special dangers” that lead to “arbitrary punitive damage awards”?

The Supreme Court has addressed this topic on several occasions. In *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), Justice Kennedy said for the Court: “Although [punitive damage] awards serve the same purposes as criminal penalties, defendants subjected to punitive damages in civil cases have not been accorded the protections applicable in a criminal proceeding. This increases our concerns over the imprecise manner in which punitive damages systems are administered. We have admonished that ‘[p]unitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant’s net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences.’” *Id.* at 417 (citation omitted).

In *Philip Morris USA v. Williams*, 549 U.S. 346 (2007), Justice Breyer added for the Court: “[W]e have emphasized the need to avoid an arbitrary determination of [a punitive damage] award’s amount. Unless a State insists upon proper standards that will cabin the jury’s discretionary authority, its punitive damages system may deprive a defendant of ‘fair notice . . . of the severity of the penalty that a State may impose’; it may threaten ‘arbitrary punishments,’ *i.e.*, punishments that reflect not an ‘application of law’ but ‘a decisionmaker’s caprice’; and, where the amounts are sufficiently large, it may impose one State’s (or one jury’s) ‘policy choice,’ say, as to the conditions under which (or even whether) certain products can be sold, upon ‘neighboring States’ with different public policies.” *Id.* at 352-53 (citations omitted).

b. What values of justice, if any, do grants of punitive damages serve in products liability cases?

In *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), the Supreme Court stated that “[p]unitive damages may properly be imposed to further a State’s legitimate interests in punishing unlawful conduct and deterring its repetition.” *Id.* at 568.

4. 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?

Never.

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?

District judges ordinarily do not have the ability to issue concurring and dissenting opinions. Moreover, district judges must faithfully apply all Supreme Court precedent. As the Supreme Court has stated, “unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.” *Hutto v. Davis*, 454 U.S. 370, 375 (1982) (per curiam).

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

The precedents that bind a district judge in Arizona are the opinions of the Ninth Circuit and the Supreme Court.

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

As a nominee to an inferior federal court, I believe it would be inappropriate for me to express an opinion on this topic.

5. 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”?

From the perspective of a district judge, there is no distinction between the precedents of the Supreme Court. All of them are binding and must be faithfully applied.

b. Is it settled law?

See answer to question 5a.

6. 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 at outside groups — about loyalty to President Trump? If so, please elaborate.

No.

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

I received these questions by email from the Office of Legal Policy (“OLP”) on March 14, 2018. Afterward, I consulted my questionnaire, reviewed relevant case law, and personally drafted answers to the questions. I emailed my responses to OLP on March 16, 2018.