Nomination of William Shaw Stickman IV to the United States District Court for the Western District of Pennsylvania
Questions for the Record
June 12, 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?

Never. A lower court is absolutely bound to fully and faithfully apply the precedent of the Supreme Court. *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997)

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. A district court judge is not in the position to question precedent of the Supreme Court. Further, as a general matter, a district court judge does not author dissenting or concurring opinions.

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

A district court does not create precedent. However, as a principle of the rule-of-law district court judge should render similar decisions when faced with similar facts. If a district court judge decides that it a change of position (rather than precedent) is warranted, the district judge should write a detailed opinion explaining the jurisprudential basis for departing from prior practice.

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

The Supreme Court itself has identified factors that it will consider in determining whether to overturn its own precedent. *See Janus v. Am. Fed'n of State, City and Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478-79 (2018). As a nominee to a District Court, I am not in the position to opine as to when it is "appropriate" for the Supreme Court to exercise its discretion to depart from 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"?

For a district court, all Supreme Court precedent is superprecedent in that it is binding on all district courts. If confirmed, I would fully and faithfully apply Roe and its progeny.

b. Is it settled law?

Please see my response to Question 2.a. above.

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. If confirmed, I will faithfully apply *Obergefell.*

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 District Court nominee, it is not appropriate for me to express agreement or disagreement with either the majority or dissenting opinion in decisions of the Supreme Court. *Heller* is precedent. If confirmed I would faithfully apply it.

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

The Supreme Court stated, "nothing 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?

I have not studied pre-*Heller* jurisprudence regarding the Second Amendment and am not, therefore, in a position to offer an opinion in response to this Question.

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?

Citizens United is precedent of the Supreme Court. If confirmed as a District Court Judge, I would faithfully apply *Citizens United* and all other precedent.

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

As a district court nominee, it would be inappropriate for me to comment on policy matters in light of Canon 5 of the Code of Conduct for United States Judges. It would also be inappropriate for me to comment on a matter that could come before me, if confirmed.

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

In *Burwell v. Hobby Lobby,* 134 S. Ct 2751 (2014), the Supreme Court held that corporations may assert claims under the statutory Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq*. The Court did not, however, determine whether a corporation may assert a claim under the free exercise clause of the First Amendment.

6. In 2004, you wrote a letter to the editor of the *Pittsburgh Post-Gazette* in which you described the "abortion industry" as "grotesque." You wrote: "[S]ince *Roe vs. Wade* more than 39 million babies have been killed by abortion." Your letter also stated that *Roe v. Wade* had led to "the intentional deaths of many millions of babies." (PITTSBURGH POST-GAZETTE, Oct. 29, 2004)

a. Given your strong personal beliefs, will you commit to recusing yourself from any case where *Roe v. Wade* is implicated if you are confirmed?

If confirmed, I would fully and faithfully apply the provisions of *Roe v. Wade, Planned Parenthood v. Casey*, and their progeny. I would review any request for recusal, in any case and for whatever reason, pursuant to the provisions of 28 U.S.C. §455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances..

b. If not, please indicate under what circumstances your impartiality would not reasonably be questioned in a case involving *Roe v. Wade*.

Please see my response to Question 6.a above.

7. In 2003 – while the Supreme Court was considering *Lawrence v. Texas* – you wrote a letter to the editor of the *Pittsburgh Post-Gazette* in which you defended then-Senator Rick Santorum for equating homosexual intercourse to incest. (PITTSBURGH POST-GAZETTE, Apr. 30, 2003) Santorum had said: "If the Supreme Court says that you have the right to consensual [gay] sex within your home, then you have the right to bigamy, you have the right to polygamy, you

have the right to incest, you have the right to adultery. You have the right to anything." (Chris Mondics, *Santorum Remarks Outrage Gay Groups*, PITTSBURGH POST-GAZETTE, Apr. 22, 2003)

In your letter to the editor, you wrote:

"The leftist sharks are circling around Sen. Rick Santorum for his opinions on the legal argument against the Texas sodomy law. . . . Even if the senator did equate homosexual intercourse with adultery, bigamy and incest, isn't that his prerogative? Are we and the leaders whom we elect no longer allowed to disagree with the activities of certain groups?

a. Why did you write a letter to the editor defending then-Senator Santorum for equating homosexuality with adultery, bigamy, and incest?

I wrote this letter to the editor as a student over sixteen-years ago and do not stand by the comments in it. My letter was an inarticulate attempt to weigh in on the topic of free speech and open discussion. It is not a defense of Senator Santorum's comments. I did not then – and do not now – agree with Senator Santorum's comments.

b. Given your strong personal beliefs, will you commit to recusing yourself from any case where LGBT rights are implicated if you are confirmed?

I would review any request for recusal, in any case and for whatever reason, pursuant to the provisions of 28 U.S.C. §455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances..

c. If not, please indicate under what circumstances your impartiality would not reasonably be questioned in a case involving LGBT rights.

My letter was an inarticulate attempt to weigh in on the topic of free speech and open discussion. I did not then – and do not now – agree with Senator Santorum's comments. Looking back upon it from the distance of time and with the maturity I have developed through my professional experiences as a law clerk and practicing attorney, and personal experiences as a husband, father, and community member, I am embarrassed by my letter, especially the strident and insensitive tone. If confirmed, every litigant in my courtroom can be assured that I will treat every person involved in every case fairly and with dignity and respect. That is what I do in my professional life and personal life, where I have worked closely with people of diverse backgrounds and experiences, including members of the LGBTQ community. As a lower court judge, I would also be bound by and faithfully apply Supreme Court and Third Circuit precedent regarding LGBTQ issues. In addition, I would faithfully adhere to the judicial oath, whereby I would promise to "administer justice without respect to persons."

8. In 2015, the Pittsburgh City Council passed an ordinance requiring employers to provide paid sick leave. On your Questionnaire, you noted that you are the lead counsel – representing a collection of business interests – in a case challenging this ordinance. The case is currently pending before the Pennsylvania Supreme Court. In one of your submissions to the trial court, you argued that requiring paid sick leave would wreak "havoc" on employers and "result in the loss of jobs and businesses." (*Pennsylvania Restaurant and Lodging Association et al. v. City of*

Pittsburgh, Response to Defendants' Motion for Judgment on the Pleadings and Supporting Briefs, Nov. 19, 2015) The United States is the only developed nation in the world that doesn't guarantee paid family leave – whether to care for a new baby, a sick family member, or an employee's own health. I have co-sponsored legislation to change that. (The Family Act, S.463)

a. What study or studies did you rely on for the proposition that providing workers with paid sick leave would wreak "havoc" on employers and "result in the loss of jobs and businesses"?

This case remains pending in the Pennsylvania Supreme Court. I am limited, therefore, in my ability to discuss the matter in detail. Subject to this limitation, my clients' position did not question whether paid sick leave is a good idea from a policy perspective. Indeed, the record of the case shows that several of my clients had already offered paid sick leave benefits to their employees before the City of Pittsburgh passed the ordinance. The issue in the case is whether the City had the authority under the Pennsylvania Home Rule Charter and Optional Plan of Government Law, 53 Pa.C.S. §2962(f), to enact the ordinance or whether regulation of employers and business is reserved to the state legislature.

It is my client's position that Section 2962(f) reserves to the state legislature (rather than individual municipalities) the authority to promulgate employment regulations (including paid sick leave) because the Commonwealth of Pennsylvania is comprised of 2560 municipalities. My clients argued that it would be difficult for a business considering moving into the Commonwealth to comply with 2560 separate regimens of employment regulations.

b. If you cannot cite a specific study, why did you make that argument in court?

Please see my response to Question 8.a. above.

9. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former 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 do not have any specific "views on administrative law." If confirmed, I will fully and faithfully apply all precedent of the Supreme Court and the Third Circuit regarding administrative law.

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

If the plain language of a statute is ambiguous or otherwise unclear, the statute's legislative history is one of the tools that can be used to aid in the interpretation of the statute.

11. 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.

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

I received these questions on the evening of June 12, 2019. I reviewed the questions, undertook necessary research and drafted responses, which I forwarded for advice and comment to the Department of Justice's Office of Legal Policy on June 14, 2019. The responses to these questions are my own.