

Senator Vitter
Questions for the Record

Lawrence Joseph Vilardo
Nominee, United States District Judge for the Western 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 *NLRB v. Canning*, ___ U.S. ___, 134 S. Ct. 2550 (2014), the Supreme Court held that 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”; moreover, the Court found that “a recess lasting less than 10 days is presumptively too short as well.” 134 S. Ct. at 2567. If the Senate says that it is in session, then *pro forma* sessions of the Senate “count as sessions, not as periods of recess” as long as under the Senate’s own rules, the Senate “retains the capacity to transact Senate business.” *Id.* at 2574. If I am fortunate enough to be confirmed, I would dutifully follow this as well as any other binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit on the issue of recess appointments.

- 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*, 505 U.S. 833 (1992), a plurality of the Supreme Court held that “[a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.” *Id.* at 878. I understand that the issue raised in this question may be pending in a petition to the Supreme Court for a Writ of Certiorari from a decision rendered by the United States Court of Appeals for the Fifth Circuit, and I therefore do not believe that it would be appropriate for me now to address the issue further. If I am fortunate enough to be confirmed, I would dutifully follow all binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit on issues involving abortion as well as all other issues.

- 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: In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court revisited “the fundamental constitutional questions resolved by *Roe*” and concluded that “the essential holding of *Roe v. Wade* should be retained and once again affirmed” based on the “principles of institutional integrity, and the rule of *stare decisis*.” *See Casey*, 505 U.S. at 845-46. The Supreme Court rejected *Roe*’s “trimester framework,” however,

which the Court found was not “part of the essential holding of *Roe*.” *Id.* at 873. Neither *Casey* nor *Roe* has been overruled by subsequent decisions of the Supreme Court. If I am fortunate enough to be confirmed, I would dutifully follow those two cases, as well as *Gonzales v. Carhart*, 550 U.S. 124 (2007), and all other binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit on this issue.

- 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: Last month, the Supreme Court heard oral argument in *Obergefell v. Hodges*, a case involving the refusal of certain states to recognize or license same-sex marriages. The Court’s decision in that case may decide the issue. In the meantime, the decision of the Minnesota Supreme Court in *Baker v. Nelson*, 291 Minn. 310, 191 N.W.2d 185 (1971), holding that a state law limiting marriage to persons of the opposite sex does not violate the United States Constitution, is good law in Minnesota because the United States Supreme Court dismissed an appeal in that case “for want of substantial federal question.” See *Baker v. Nelson*, 409 U.S. 810 (1972). In *United States v. Windsor*, ___ U.S. ___, 133 S. Ct. 2675 (2013), the Supreme Court struck down the federal Defense of Marriage Act on equal protection and due process grounds. In reaching its decision, the Court found that it was “virtually [the] exclusive province of the States” to define and regulate domestic relations “subject to constitutional guarantees,” and that “[t]he State’s power in defining the marital relation is of central relevance” to its decision. *Id.* at 2690-92 (internal quotations omitted). Because the issue raised by this question is currently pending, I do not believe it would be appropriate now for me to respond further. If I am fortunate enough to be confirmed, I would dutifully follow any decision rendered in *Obergefell* and all other binding precedent of the Supreme Court and the United States Court of Appeals for 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 district court judges are bound to apply all precedent from controlling jurisdictions regardless of their personal views. Therefore, they have no business deciding cases based on any political or personal agenda. They are bound to apply the law as it is, not as they might think it should be or wish it were. I therefore would apply prior binding case law regardless of my 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 *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court concluded that “it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.” *McDonald*, 561 U.S. at 778. The Court therefore held “that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*,” *id.* at 791, that is, the right to keep and bear arms for protection in the home and elsewhere. I am not familiar with lower federal court rulings upholding gun control laws, but if I am fortunate enough to be confirmed, I would follow the binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit with respect to any Second Amendment issue.

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

Response: Last month, the Supreme Court heard oral argument regarding Oklahoma’s method of imposing capital punishment. Because the issue is currently pending, I do not believe that it would be appropriate for me now to address the issue. If I am fortunate enough to be confirmed, I would dutifully follow any decision rendered in the Oklahoma capital punishment case and all other binding precedent of the Supreme Court and the United States Court of Appeals for the Second Circuit.