

**Responses of Justice Wilhelmina M. Wright
Nominee, United States District Court for the District of Minnesota
to Questions for the Record of Senator David Vitter**

- 1. In a panel on Global Rule of Law, you said “Judiciary must reflect the diversity of society so that judgment and insight that come from diverse experiences can assist in development of the law and the reality and perception of fairness and impartiality.” By referring to “diverse experiences” providing insight into the development of law, then speaking of fairness and impartiality in the latter part of the quote, you seem to indicate that fairness and impartiality to all parties, especially ones that don’t fit the prerequisites of your particular agenda, are an afterthought and that the concepts of true fairness and impartiality are ones that you do not hold particularly dear despite the oath you took when you became a judge.**
 - a. Please explain your philosophy on impartiality and fairness in the judicial process, with particular emphasis on parties you may personally disagree with, but who still may have a meritorious claim or defense.**

Response: Fairness, impartiality, respect for the rule of law, and respect for all litigants are fundamental requirements for a judge. These are the values on which my oath as a judge is founded. Indeed, I have no agenda as a judge other than these values. In my nearly 15 years of service as a Justice on the Minnesota Supreme Court and as a Judge on the Minnesota Court of Appeals and the Ramsey County District Court, these values have been my lodestar, and I give no consideration to whether I agree or disagree with a party.

I also appreciate the opportunity to clarify my statement quoted above. I define diverse experiences broadly. It has been my experience as a Justice on the Minnesota Supreme Court and as a Judge on the Minnesota Court of Appeals, in which jurists engage in collegial decision-making, that regional diversity and practice-area diversity in different jurisdictions throughout Minnesota have enriched the deliberations regarding rules and procedures for the practice of law. Similarly, in light of the number of highly qualified women lawyers and lawyers of color who are learned in the law and have the ethical and moral fitness to serve as a judge, I believe it would undermine the public’s trust and confidence in the judiciary if there were no judges who are women or judges of color.

- b. 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: In my 15 years of service on the bench, I have prided myself on my impartiality and fairness to all parties and my commitment to faithfully applying legal precedent. If I am confirmed as a district judge, I will faithfully apply the precedents of

the United States Supreme Court and the Eighth Circuit, even if I personally disagree with such precedents.

- 2. Under Minnesota law, when domestic abuse between the parties is not at issue, there is a presumption that joint legal custody is in the best interests of the child. In *Kellen v. Kellen*, you upheld a district court grant of sole legal custody of a child to one spouse when domestic abuse was not an issue, ignoring state law. Has your philosophy changed on respecting the legislative branch's authority to make law?**

Response: Under Minnesota law enacted by the Minnesota Legislature, a custody decision must be made by applying several factors, including "the best interests of the child." In *Kellen v. Kellen*, under the governing Minnesota statute, there was a rebuttable presumption that joint legal custody was in the best interests of the child. The district court applied that presumption of joint legal custody and found, based on the evidence presented to the district court, that the presumption in favor of joint legal custody had been rebutted. The legal standard of review for an appellate court in this case is abuse of discretion. Based on the application of this legal standard, the evidence in the record supported the district court's decision. For this reason, the Minnesota Court of Appeals unanimously affirmed the district court's decision.

- 3. 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: As a decision of the United States Supreme Court, *NLRB v. Canning, et al.*, 134 S. Ct. 2550 (2014), is binding precedent on all inferior courts. The Supreme Court concluded, "in light of historical practice, that a recess of more than 3 days but less than 10 days is presumptively too short to fall within the [Recess Appointment] Clause." *Id.* at 2567. However, the term "presumptively" used by the Court was used to leave open the possibility that a "very unusual circumstance" – such as "a national catastrophe...that renders the Senate unavailable but calls for urgent response – could demand the exercise of the recess-appointment power during a shorter break." *Id.* If confirmed, I would faithfully apply all decisions of the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

- 4. 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 having admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all aborting clinics in the state are shut down?**

Response: In every case, a judge must apply the law of any binding precedent to the particular facts that have been developed through the presentation of evidence by all parties. The plurality decision of *Planned Parenthood v. Casey*, 505 U.S. 833 (1992),

reasoned that only when a state regulation of abortion imposes an “undue burden” on a woman’s ability to decide whether to terminate her pregnancy “does the power of the State reach into the heart of the liberty protected by the Due Process Clause.” *Id.* at 874. A regulation imposes an undue burden if its purpose or effect places a substantial obstacle in the path of a woman who seeks abortion of a nonviable fetus. *Id.* at 877. Nevertheless, a regulation that has an incidental effect that makes it more difficult or more expensive to procure an abortion is not enough to invalidate the regulation. *Id.* at 874. Moreover, regulations that are designed to foster the health of a woman who seeks an abortion are valid when they do not constitute an undue burden. *Id.* at 878. My research indicates that the facts described in this question have not been presented in a case decided by the United States Supreme Court or the Eighth Circuit. If a case of this nature were presented to me, I would conduct a thorough examination of all relevant evidence and faithfully follow the precedents of the United States Supreme Court and the Eighth Circuit.

5. The Court’s ruling on the right of privacy in *Griswold v. Connecticut* laid the foundation for *Roe v. Wade*. From your perspective, is *Roe v. Wade* settled law?

Response: As a decision of the United States Supreme Court, *Roe v. Wade*, 410 U.S. 113 (1973), is binding precedent until the United States Supreme Court decides to overrule it. However, the rule of law established in *Roe v. Wade* must be applied in the context of other subsequently decided cases of the United States Supreme Court, such as *Planned Parenthood v. Casey*, 505 U.S. 883 (1992), and *Gonzales v. Carhart*, 550 U.S. 124 (2007).

6. How would you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to the states under the 14th Amendment in *McDonald v. City of Chicago* with the more recent crop of lower federal 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 United States Supreme Court reiterated its analysis in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and held that the Fourteenth Amendment makes the Second Amendment right to bear arms fully applicable to states under the Due Process Clause, and this right is a substantive guarantee that is fundamental to our scheme of ordered liberty. The *McDonald* court also reiterated that citizens must be permitted to use handguns for the core lawful purpose of self-defense, which is a deeply rooted tradition. 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. In doing so, the Supreme Court reversed the Seventh Circuit decision that affirmed a ban on the possession of firearms for the stated purpose of protecting Chicago’s residents from loss of property and from death from firearms. The Supreme Court in *Heller* also indicated that its opinion should not “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.” 544 U.S. at 626-27. If confirmed, I would apply *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *District of Columbia v. Heller*, 554 U.S. 570 (2008), and any other applicable precedents of the United States Supreme Court and the Eighth Circuit to any case with the facts described in the question presented here.