

**Nomination of Dabney Friedrich to the U.S. District Court for the District of Columbia
Questions for the Record
Submitted August 1, 2017**

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 a district court to depart from Supreme Court or the relevant circuit court's precedent?**

Response: A district court is always bound by Supreme Court precedent and the precedent of the relevant circuit court. A district court may not depart from Supreme Court precedent. A district court may only depart from the relevant circuit court's precedent if that precedent has been overridden by a subsequent decision of the Supreme Court.

- b. **When, if ever, is it appropriate for a district court judge to question Supreme Court or the relevant circuit court's precedent?**

Response: As noted above, a district court is always bound by Supreme Court precedent and the precedent of the relevant circuit court. There may, however, be rare occasions where a district court would note alternative holdings of other circuits facing the same issue. This does not, however, alleviate the responsibility of the district court to follow the relevant circuit court 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 textbook 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 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"? "superprecedent"?**

Response: I have not read Justice Gorsuch's textbook and I have not studied the basis for those designations. However characterized, *Roe v. Wade* and all other precedent of the Supreme Court is binding on district courts. If I am confirmed, I will adhere to such precedent.

- b. **Is it settled law?**

Response: Like all other decisions of the Supreme Court, *Roe v. Wade* is binding precedent.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry.

a. Is the holding in *Obergefell* settled law?

Response: Like all other decisions of the Supreme Court, *Obergefell v. Hodges* is binding precedent.

b. On June 30, the Texas Supreme Court issued a decision in *Pidgeon v. Turner* which narrowly interpreted *Obergefell* and questioned whether states were required to treat same-sex couples equally to opposite-sex couples outside the context of marriage licenses. The Texas Supreme Court stated that “The Supreme Court held in *Obergefell* that the Constitution requires states to license and recognize same-sex marriages to the same extent that they license and recognize opposite-sex marriages, but it did not hold that states must provide the same publicly funded benefits to all married persons, and... it did not hold that the Texas DOMAs are unconstitutional.” Is this your understanding of *Obergefell*?

Response: I have not read the Texas Supreme Court’s decision. I do not believe it would be appropriate for me to offer an opinion as to a matter that might come before me if I am confirmed. If the matter were to come before me, I would carefully review the parties’ arguments and all relevant precedent including *Obergefell v. Hodges*.

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?

Response: I do not believe it would be appropriate for me to offer an opinion as to a matter that might come before me if I am confirmed. If I am confirmed, I will adhere to *Heller* and all precedent established by the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

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

Response: I do not believe it would be appropriate for me to offer an opinion as to the contours of the *Heller* decision and its implications other than to note that the Court’s decision states that “[n]othing 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?**

Response: I am not sufficiently familiar with decisions of the Supreme Court on this topic pre-dating *Heller* to offer an opinion. If I am confirmed, I will adhere to *Heller* and all precedent of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

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?**

Response: I do not believe it would be appropriate for me to offer an opinion as to a matter that might come before me if I am confirmed. If I am confirmed, I will adhere to *Citizens United v. FEC* and all precedent of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

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

Response: I do not believe it would be appropriate for me to offer an opinion as to a matter that might come before me if I am confirmed. If I am confirmed, I will adhere to *Citizens United v. FEC* and all precedent of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

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

Response: I do not believe it would be appropriate for me to offer an opinion as to a matter that might come before me if I am confirmed. If I am confirmed, I will adhere to all precedent of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

6. Federal law generally requires federal district court judges to live in the district where they have been appointed. The District Court for the District of Columbia is one of the few exceptions. (28 U.S.C. § 134)

I understand that Representative Eleanor Holmes Norton, who represents the District of Columbia, was not consulted on nominations to the D.C. federal district court, including yours. During the last three Administrations, she was consulted. And during the Obama and Clinton Administrations, she was not just consulted but also recommended candidates to the White House who were then nominated by the President. Her candidates were either District residents or committed to relocating to the District.

It is my understanding that you have recently relocated to the D.C. area.

If confirmed, do you plan to live in the District of Columbia during your tenure as a federal district judge for the District of Columbia?

Response: I have no present plans to relocate. If I am confirmed I will adhere to all relevant statutes regarding the residence of district court judges.

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

Response: I received these questions on August 1, 2017. I reviewed the questions, conducted research, and drafted answers. I then shared the answers with the Department of Justice's Office of Legal Policy ("OLP"). After speaking with attorneys in OLP, I made revisions, finalized my responses, and authorized OLP to submit my responses.

Senator Dick Durbin
Written Questions for Brian Benczkowski, Dabney Friedrich and Stephen Schwartz
August 1, 2017

For questions with subparts, please answer each subpart separately.

Questions for Dabney Friedrich

1. **Please discuss how your experience as a Commissioner on the U.S. Sentencing Commission has helped prepare you to serve as a district court judge.**

Response: The U.S. Sentencing Commission statutory mandate, as set forth in the Sentencing Reform Act of 1984, includes working with all three branches of government, as well as other stakeholders in the criminal justice system, to formulate sentencing policies and practices for the federal courts. As a member of the Commission, I learned a great deal about sentencing practices and procedures, the legislative drafting process, and the practices and procedures of administrative agencies. I believe that my experience as a Commissioner provides me with insight into the aims and objectives of the federal sentencing regime that will prove valuable when I confront sentencing decisions.

2. **Do you believe that our current federal sentencing laws for nonviolent drug offenses give judges an appropriate amount of discretion to make sure that sentences fit the crime?**

Response: Federal sentencing laws that apply to federal drug offenders include statutory maximum and minimum provisions enacted by Congress, as well as Sentencing Guidelines promulgated by the U.S. Sentencing Commission. While federal statutory and guideline provisions include enhanced penalties for aggravating factors such as the possession or use of a firearm, bodily injury, and criminal history, for example, they do not otherwise distinguish between violent and non-violent drug offenders.

The Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), which declared the federal sentencing guidelines advisory, enhanced the discretion of judges to sentence federal offenders outside of the relevant sentencing guideline range. However, statutory maximum, and in some cases, minimum penalties continue to limit judges' discretion in sentencing.

During my tenure on the U.S. Sentencing Commission, the Commission made a number of recommendations that would have lowered the statutory penalties for drug-related offenders (*see, e.g.*, Mandatory Minimum Report recommending an expansion of the safety valve, the reduction of certain mandatory penalties, the elimination of the stacking requirement for 18 U.S.C. § 924(c) offenses; Career Offender Report recommending distinguishing between drug trafficking and violent offenders in the career offender statutory directive). To date, however, Congress has not adopted any of these recommendations. If confirmed to be a federal district court judge, I will faithfully apply all federal statutory and

guideline sentencing provisions, as interpreted by the District of Columbia Circuit and the Supreme Court of the United States.

3. The United States incarcerates more people per capita than any other nation. I met several years ago with Justice Anthony Kennedy who said that our system of over-incarceration was a problem deserving of special focus. **What role do you see for federal judges to point out and address problems with our system of incarceration?**

Response: The role of a federal district court judge is to sentence all defendants consistent with the federal sentencing statutes, guidelines, and case law. Federal district judges have a statutory duty to impose in each individual case a sentence that is sufficient but not greater than necessary to fulfill the purposes of sentencing. In this sense, judges play a critical role in determining incarceration levels. However, policy determinations related to the overall incarceration levels in our federal criminal justice system are best addressed by the political branches which have the ability to study effectively sentencing-related data and practices on a national scale.

4.
 - a. **From your experience on the Sentencing Commission, do you believe that our nation does a good job helping people leaving the prison system re-enter society and re-establish themselves as productive citizens?**

Response: As a former member of the U.S. Sentencing Commission, I am aware of recidivism data that suggests that programs and supports provided in the federal system – by the Federal Bureau of Prisons and the Federal Probation Office – help some individuals successfully re-enter society. However, based on my experience at the Sentencing Commission and as a volunteer tutor in the Federal Bureau of Prisons, I believe that the federal government can and should do more to enhance the educational, vocational, and other programming within the federal criminal justice system.

- b. **Do you believe judges should play a role in helping identify ways to reduce recidivism?**

Response: Judges can play a role in helping to identify ways to reduce recidivism by fashioning sentences (including conditions of supervised release and probation) in individual cases that further rehabilitation and other purposes of sentencing. However, policymakers who have the ability to collect, analyze, and disseminate sentencing data on a macro level are better equipped to identify effective approaches to reduce recidivism.

**Nomination of Dabney Langhorne Friedrich
to be United States District Judge for the District of Columbia
Questions for the Record
Submitted August 1, 2017**

QUESTIONS FROM SENATOR WHITEHOUSE

1. You were serving as an Associate Counsel in the White House Counsel's Office during the 2005-2006 U.S. Attorney firing scandal. You coordinated with the DOJ on behalf of White House Counsel Harriet Miers and later emailed to your husband, Matthew Friedrich, the list of districts in which the U.S. Attorneys were to be fired.

- a) Why did you email your husband this information?

Response: I did not have a decision-making role in the removal of U.S. Attorney's during the Bush Administration, and I have very limited knowledge about how those decisions were made. I left the White House Counsel's Office in April 2006. My recollection is that the overwhelming majority of the U.S. Attorneys were removed in December 2006, several months after I left the White House Counsel's Office.

The e-mail that I sent to my husband was personal and was unrelated to my duties as an Associate Counsel to the President.

- b) What role does the White House Counsel's Office have in determining whether a U.S. Attorney should be hired or fired?

Response: U.S. Attorneys serve at the pleasure of the President. The role of the White House Counsel's Office in appointments and removals varies from Administration to Administration.

During my tenure as an Associate Counsel to the President (September 2003 to April 2006), Associate Counsels routinely attended interviews of candidates for U.S. Attorney positions in geographical areas to which the Associate Counsels were assigned.

- c) Do you think White House Counsel Harriet Miers or Attorney General Alberto Gonzales did anything wrong in the series of events that led to the removal of nine U.S. Attorneys?

Response: As noted above, I left the White House Counsel's Office several months before the majority of the U.S. Attorneys were removed. I do not have sufficient personal knowledge of the actions that White House Counsel Harriet Miers or Attorney General Alberto Gonzales took related to the removal of U.S. Attorneys to offer an opinion.

- d) Do you think it is appropriate for the White House to remove a U.S. Attorney during an investigation that could target members of the White House staff?

Response: As a nominee for judicial office, I believe it would be inappropriate for me to offer any opinion with respect to this hypothetical.

- e) What institutional changes would you like to see to prevent future incidents of politically influenced personnel decisions in the Justice Department?

Response: As a nominee for judicial office, I believe it would be inappropriate for me to offer any recommendations with regard to personnel decisions of the Executive Branch.

2. In 2002, you were the AUSA assigned to the case of a suspected terrorist, Jean-Tony Oulai, from the Ivory Coast. Although immigration law required that he be released within six months, he was held for well over a year before being deported. You later spent eleven years serving on the U.S. Sentencing Commission.

- a) What are your views on the current sentencing guidelines? Are they too harsh, too lenient, or appropriately calibrated?

Response: During my tenure as a member of the U.S. Sentencing Commission, the Commission made a number of recommendations to Congress regarding statutory provisions that affect the sentencing guidelines. Among other things, the Commission recommended that Congress broaden safety valve relief so that a fewer number of offenders would be subject to mandatory minimum penalties, eliminate the stacking requirement in 18 U.S.C. § 924(c), and reduce and narrow certain mandatory minimum penalties. To date, Congress has not adopted any of these recommendations.

If confirmed, I will faithfully follow all relevant statutory and guideline sentencing provisions and Supreme Court and District of Columbia Circuit case law.

- b) Were you concerned in Mr. Oulai's case with his prolonged detention?

Response: During my tenure at the U.S. Attorney's Office in the Eastern District of Virginia, I worked on a matter involving Jean-Tony Oulai. I left the U.S. Attorney's Office in early 2002, before Mr. Oulai's case was resolved. I do not have access to Mr. Oulai's case file.

While I worked on Mr. Oulai's case, the U.S. Attorney's Office worked diligently to resolve his case in a timely fashion.

- c) Do you consider it a valid exercise of executive power to detain suspects in Guantanamo Bay or other facilities overseas without charge?

Response: In *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), the Supreme Court of the United States held that the U.S. government had the power to detain enemy combatants, including U.S. citizens, based on Congress's authorization for the use of military force. The Court further held that due process demanded that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the factual basis for that decision before a neutral decision maker. Since *Hamdi*, the Supreme Court and the District of Columbia Circuit have issued a number of decisions relating to the detention of enemy combatants. If confirmed, I will faithfully apply all relevant precedents of the Supreme Court and the District of Columbia Circuit.

3. You've said that "[t]hose of us who work in the White House Counsel's Office clearly do not serve the President in his personal capacity."

a) When does it become appropriate for a president to bring in outside counsel when being investigated for activities undertaken before becoming president?

Response: The decision by a President to seek outside counsel is a personal one that depends on the facts and circumstances of each case.

b) Are you concerned about the dual legal teams – the White House Counsel's Office and the private legal team led by Marc Kasowitz – currently surrounding the president?

Response: I do not have enough factual information to opine on the President's legal representation. Moreover, as a nominee for judicial office, it would not be appropriate for me offer an opinion.

4. You defended President Bush's detention powers, noting that "[t]he President's legal authority to detain American citizens as enemy combatants is, in our view, clear," and adding: "For the detainees, the living conditions, medical care, and diet are no doubt among the best ever provided by a country to individuals who have taken up arms against it."

a) Do those comments still reflect your views of executive detention powers?

Response: The remarks I delivered regarding the Bush Administration's detention policies were made in my capacity as an Associate Counsel to the President. The remarks reflected the Administration's legal position at that time, and not my personal views.

b) Do your comments mean that you would uphold executive power to detain American citizens in foreign prisons like Guantanamo Bay without charge?

Response: If I am confirmed to be a federal district judge, I will faithfully apply all relevant Supreme Court and District of Columbia Circuit

precedents in deciding whether to uphold Executive branch decisions relating to detention.

- c) Did the subsequent revelations of waterboarding and other “enhanced interrogation techniques” being used on detainees change your view of the favorable conditions you describe above, or do you stand by your description of the living conditions afforded to enemy detainees?

Response: As I have noted, the remarks I made did not represent my personal views. Issues relating to the Department of Defense were not part of my assigned portfolio, and I do not have adequate knowledge of the facts relating to detainee conditions to express any views on this matter.

5. As a judge, you will be expected to impartially administer justice to all who come before you. Who are the judges you consider exemplars of the type you would seek to emulate, and what makes them stand out in your eyes?

Response: As a young lawyer recently graduated from law school, I had the honor to serve as a law clerk to Judge Thomas F. Hogan on the U.S. District Court for the District of Columbia. Since then, Judge Hogan, who has served with distinction as a federal judge for thirty-five years, has been my role model and mentor. Not only does Judge Hogan have a first-rate legal mind, he is widely viewed as a fair and impartial judge who keeps an open mind and applies the law to the facts of each case, without regard to the parties or his own political or personal views. He treats everyone in his courtroom – the parties, attorneys, witnesses, jurors, and courtroom staff –with great respect. If confirmed as a district judge, I would strive to follow Judge Hogan’s example.

6. The Seventh Amendment to the Constitution gives citizens the right to civil jury trials. But a series of recent 5-4 decisions from the Supreme Court has eroded that access, often forcing individuals into alternative proceedings that are more favorable to corporations – like mandatory arbitration. Today, juries try less than 1 percent of civil cases in the federal court system. What is your view on the importance of civil jury trials in our legal system? Do you think the decline of jury trials has any positive or negative consequences? Please specify.

Response: Jurors perform a critical role in our justice system by protecting the rights and liberties of American citizens. Civil jury trials provide an important safeguard in our legal system that I will honor if confirmed to serve as a federal district judge. I do not have sufficient knowledge to comment on the prevalence of civil jury trials or the impact that any changes have had on our civil justice system over time.

Senate Judiciary Committee
“Nominations”
Questions for the Record
July 25, 2017
Senator Amy Klobuchar

Question for Mrs. Friedrich, Nominee to be United States District Judge for the District of Columbia:

I understand that you previously worked as an Assistant U.S. Attorney in California and Virginia.

- As a former prosecutor myself, I am interested in how you believe this experience will inform your work as a federal judge. Can you elaborate on that point?

Response: As a federal prosecutor, I gained extensive trial-related experience in a wide range of criminal cases, including fraud, drug, immigration, and violent crimes. As a result, I have a broad base of knowledge of the federal criminal justice system, and I am familiar with the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, jury instructions, presentence investigative reports, grand jury and motions practice, and discovery, among other things. I feel that my prosecutorial experience in the federal criminal justice system will provide a helpful background should I be so fortunate to be confirmed as a federal district judge.

Senator Mazie K. Hirono

Questions for the Record following hearing on July 25, 2017 entitled:

“Nominations”

Dabney L. Friedrich:

1) In 2004, you gave a speech to the Detroit Federalist Society in which you said that “undue White House influence on the Department [of Justice]’s law enforcement decisions could create a serious potential for unfair use of prosecutorial power and a political problem for the Administration.”

- a. Would you consider the President firing the FBI Director in an attempt to end an FBI investigation to be undue White House influence on the Department of Justice’s law enforcement decisions?

Response: As a nominee for federal judicial office, I believe it would be inappropriate for me to offer an opinion.

- b. Would you consider the President publicly criticizing the Attorney General for a recusal decision, decisions not to start specific investigations, and decisions not to replace his subordinates to be undue White House influence on the Department of Justice’s law enforcement decisions?

Response: See my response to Question 1.a.

- c. Would you consider the President alleging that the Acting FBI Director has a conflict of interest due to his wife’s political activities to be undue White House influence on the Department of Justice’s law enforcement decisions?

Response: See my response to Question 1.a.

- d. Would you consider the President stating that a Special Counsel should not investigate his personal finances to be undue White House influence on the Department of Justice’s law enforcement decisions?

Response: See my response to Question 1.a.

2) Given your role in the 2005-07 U.S. Attorney firings, do you think it is appropriate for the President to dismiss a U.S. Attorney or other DOJ official for political reasons? If so, please clarify what reasons should qualify. If not, please explain when it is appropriate for the President to dismiss a U.S. Attorney or other DOJ official.

Response: I did not have a decision-making role in the removal of U.S. Attorneys during the Bush Administration. I left the White House Counsel's Office in April 2006. My recollection is that the overwhelming majority of the U.S. Attorneys were removed in December 2006, several months after I left the White House Counsel's Office. Moreover, as a nominee for federal judicial office, I believe it would be inappropriate to offer an opinion as to the circumstances under which the President may dismiss any Executive Branch official.

- 3) You participated in a 2003 forum on behalf of the Bush White House in which you criticized Democrats for "using unprecedented tactics to obstruct President Bush's court of appeals nominees." Would you consider the refusal to hold a hearing on Judge Garland to be an unprecedented tactic to obstruct a presidential nominee to an even higher court?

Response: The remarks I made during a 2003 forum regarding President Bush's judicial nominees were made in my capacity as an Associate Counsel to the President. At that time, a large number of President Bush's court of appeals nominees had not received a hearing. As a nominee for judicial office, it would be inappropriate for me to comment in this context on the Senate Judiciary Committee's decision not to hold a hearing on another nominee.

- 4) In *Hobby Lobby*, the corporation made claims about contraception based on religious beliefs which are directly contravened by scientific research. By accepting as facts these religious beliefs and probing no further in agreeing that the corporation could deny coverage, the Hobby Lobby decision leaves us in a tough spot. Are there any limits --and what are the limits -- on what a corporation may claim as a belief in justifying its denial of health care for its employees?

Response: It is my understanding that the scope of the *Hobby Lobby* decision is currently being litigated. As a nominee for federal judicial office, I believe it would be inappropriate for me to offer an opinion with respect to an issue of law that may come before me if I am confirmed. *See* Canon 3(A)(6), Code of Conduct for United States Judges ("A judge should not make a public comment on the merits of a matter pending or impending in any court.).

- 5) In 1992, in *Planned Parenthood v. Casey*, the Supreme Court re-affirmed the core holding of *Roe* that the right to an abortion is constitutionally protected. The Court held that these decisions are protected because they are among "the most intimate and personal choices a person makes in a lifetime."
- a. Do you believe the Constitution protects the right to make "intimate and personal" decisions?

Response: I do not believe it would be appropriate for me to offer an opinion as to an issue of law that might come before me if I am confirmed. *See* Canon 3(A)(6), Code of Conduct for United States Judges ("A judge should not make a public comment on the merits of a matter pending or impending in any court.). If I am confirmed, I will adhere to *Planned Parenthood v. Casey* and all precedent of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

- b. Does the Constitution define what a “person” is?

Response: As a nominee for federal judicial office, I believe it would be inappropriate for me to offer an opinion with respect to an issue of law that may come before me if I am confirmed.

- i. Has the Supreme Court ever ruled that the 14th Amendment confers personhood on a fetus?

Response: I am not aware of any such holding by the Supreme Court.

- ii. If a state were to enact a personhood measure by redefining a fetus as a legal person, would that not be in direct contradiction to the Supreme Court’s holding in *Roe*?

Response: As a nominee for federal judicial office, I believe it would be inappropriate for me to offer an opinion with respect to an issue of law that may come before me if I am confirmed. See Canon 3(A)(6), Code of Conduct for United States Judges (“A judge should not make a public comment on the merits of a matter pending or impending in any court.”).

- c. Did *Whole Woman’s Health* fully answer the remaining questions about the permissible breadth of pre-viability regulations allowed under *Casey*?

Response: See my response to Question 5.b.ii.

- 6) What is the appropriate level of scrutiny to apply to challenges on campaign contribution limits or bans?

Response: The Supreme Court held in *Buckley v. Valeo*, 424 U.S. 1, 29 (1976), that campaign contribution limits are subject to a “rigorous standard of review.” I will adhere to *Buckley* and all other relevant precedent of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.

- 7) When Congress reauthorized the key expiring provisions of the landmark Voting Rights Act in 2006 it did so with a nearly unanimous vote. Before reauthorizing the protections of Section 5 in jurisdictions with a long history of discrimination in voting, the Judiciary Committee alone held 9 hearings on the Voting Rights Act. The thousands of pages of material the Senate reviewed, together with the record developed in a dozen hearings in the House, clearly established the continuing need for Section 5. And yet, in *Shelby County*, the Roberts Court ignored this evidence and the Court’s long precedent, made its own determination about the value of the extensive evidence reviewed by Congress.

- a. Does the *Shelby County* decision raise concerns about the limits of judges as policy-makers and the problems that arise when a Court steps outside of the judicial role and acts as a legislative body?

Response: The Supreme Court's decision in *Shelby County* is binding on all lower courts. If I were fortunate enough to be confirmed as a district judge, I will faithfully apply *Shelby County* and other relevant precedents to the best of my ability.

- 8) The Supreme Court's decision in *Korematsu* has never been overturned, but has joined the short list of most regrettable decisions in the Court's history. Does *Korematsu* hold any precedential value?

Response: To my knowledge, the Supreme Court has not explicitly overruled *Korematsu*. However, the *Korematsu* decision has been widely criticized and is viewed as limited to its specific facts. For lower courts, all Supreme Court decisions that have not been overruled have precedential value.

- a. Are there other Supreme Court decisions that have not been overruled that you believe lack precedential value? And if so, which ones?

Response: For lower courts, all Supreme Court decisions that have not been overruled have precedential value.

- i. For the cases listed, please explain why those cases lack precedential value.

- 9) What remedies are available should the President or Executive Branch disregard a ruling of the Supreme Court or a lower federal court?

Response: As a nominee for federal judicial office, I believe it would be inappropriate for me to offer an opinion.

- 10) Do you believe that when analyzing a statute, and choosing to use the construction of original public meaning, such a choice reflects your values?

Response: If confirmed as a federal district court judge, I will consult a statute's text, structure, and history, as well as relevant precedent, to interpret its meaning. My personal values and beliefs will have no bearing on my case decisions.

- a. Why choose to discern the original meaning rather than considering tradition, current norms, and precedent as baseline or foundation of your constitutional analysis?

Response: For issues of constitutional interpretation, I will follow a similar approach to that I set forth above for statutory analysis. I will consult the text, structure, and history

of the constitutional provision, as well as Supreme Court and District of Columbia Circuit precedents interpreting the specific constitutional provision, to determine its meaning.

- b. Why do you believe that you are able to separate ideological and partisan views when judging?

Response: I appreciate that the role of a federal judge is a limited one – to interpret the law faithfully, consistent with applicable precedents. I understand that it would be improper to allow my personal beliefs or political views to influence my decisions in any case.

- c. Do you believe that life experiences and unconscious biases play a role in judging?

Response: Judges bring their own individual life experiences to the bench. However, when a judge takes the judicial oath to apply the law faithfully and to decide cases impartially, based on the law and the facts, irrespective of the parties, the judge pledges adherence to the rule of law. If confirmed, I will endeavor to do all in my power to honor the judicial oath.

- 11) Judges of the U.S. District Court for D.C. are not required to live in the district they serve, unlike most federal judges, and nominees to these positions do not have representation in the Senate to advocate for them during the confirmation process. If confirmed, will you commit to living in the District of Columbia during your term?

Response: My family recently moved from California to a Maryland neighborhood immediately adjacent to the District of Columbia where we lived in 2014, before we moved to California. We decided to move back to our old neighborhood to minimize the disruption that a second cross-country move would cause our children. We have no immediate plans to move to the District of Columbia.

- 12) It has been reported that President Trump has essentially outsourced the presidential responsibility of nominating judges to the Federalist Society. Almost every judicial nominee to come before the Committee so far in this Congress has been a member or leader of the Federalist Society, as have many Trump Justice Department nominees.

- a. Are you a member of the Federalist Society? If so, since when? And will you maintain your membership during your service as a federal judge if confirmed?

Response: I am not, and have never been, a member of the Federalist Society.

- b. You were quoted in a 2005 article as saying that “the Federalist Society ha[d] no official role in the judicial nomination process” during the Bush administration. Can you say the same about the Trump administration?

Response: I do not know what role, if any, the Federalist Society currently plays in the judicial nomination process.

- c. What does it tell us that nearly every judicial nominee to come before us in this Congress is a member of the Federalist Society?

Response: I do not know how many current judicial nominees are members of the Federalist Society.