

**Nomination of John Michael O'Connor to the United States District Court for
the Northern, Eastern, and Western Districts of Oklahoma
Questions for the
Record July 18, 2018**

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?

It is not appropriate for lower courts to depart from Supreme Court precedent.

b. Do you believe it is proper for a district court judge to question Supreme Court precedent in an opinion?

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs.

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

Such action might be justified when (i) a binding precedent of a superior court or a new statute or regulation has intervened since the district court last decided the issue, or (ii) the district court determines that its previous reading of binding precedents was incomplete.

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

When a majority of the members of the Supreme Court determines that overturning its own precedent is constitutional and appropriate.

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”?

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to apply the binding precedents of the U. S. Supreme Court to the facts presented in each case. When it comes to my duty, if confirmed, I am bound to follow both precedent and superprecedent.

b. Is it settled law?

Settled law, superprecedent and other binding decisions of the Supreme Court are to be followed by all lower courts. If confirmed, I will faithfully apply *Roe* and all other such precedents.

3. In 1989, you spoke at an anti-choice rally at Oral Roberts University on the 16th anniversary of the Supreme Court’s decision in *Roe v. Wade*. The organizers of the event said that the goal of the gathering was to “commemorate the lives of the unborn who lost their lives through abortion.” According to a local newspaper, “rally speaker John O’Connor, an attorney, said he believed the Supreme Court will gradually chip away at the *Roe* case. In that case, justices decided fetuses aren’t persons and allowed women to terminate pregnancy under the right of privacy, said O’Connor.” (Sonya Colberg, *Foes of Abortion Rally at ORU*, TULSA WORLD (Jan. 25, 1989); SJQ Attachment to 12(e) at pp. 184-87).

a. How did you understand the Supreme Court to be “gradually chip[ping] away at the *Roe* case”?

First, if confirmed, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs. Second, at the time I made the referenced statement, it was a statement of future expectation, rather than a commentary on then-current decisions of the Supreme Court. I expected that state statutes attempting to impact the abortion right described in the *Roe* decision would continue to work their ways to the Supreme Court.

4. 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?

Obergefell is Supreme Court precedent binding on all lower courts. If confirmed, I will faithfully apply it and all other such precedents.

5. 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?

If confirmed, I am duty bound to follow the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do. This question calls for my personal belief on the meaning of the Second Amendment. Under the Code of Conduct for United States Judges, Canon 3(A)(6), I should not make a public comment on the merits of a matter pending or impending in any court.

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

Please see my response to Question 5(a).

c. Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?

As a nominee for a district court judgeship, it would not be appropriate for me to comment critically on a precedent that I may be required to consider in a case before me.

6. On page five of your Questionnaire, you identify yourself as a member of Brother House of Tulsa. According to a report in the *Tulsa World*, the organization is committed to developing male spirituality and fatherhood in response to "'male bashing' from the opposite sex." (Carolyn Jenkins, *Brother House Promotes Men's Spirituality*, TULSA WORLD (Feb. 18, 1990)). The report also explained that members participate in "wilderness retreat[s]" and "men's lodge[s]" in order to bond with one another. Some of these retreats include "loosely adopted Indian rituals, including sweat lodges" and drumming. You are identified as a Director or Adviser of the organization in the same newspaper article. In response to questioning by Senator Durbin, you explained that the organization "was a group that was started by a friend of mine ... It was principally a place for men to gather to talk about issues related to men's life." You confirmed having attended meetings but said that you participated "two or three times 25 or 30 years ago."

a. On your Questionnaire, you did not provide dates of your membership. When were you affiliated with Brother House? Are you still a member?

I was never a member, officer, director or employee of this organization. This was essentially a discussion group for men on spiritual issues. A woman is listed as a director of the organization in the attached copy of a brochure from Brother House of Tulsa. I attended two or three one-hour discussion group meetings

between 1990 and 1992. I never attended a retreat, lodge or ritual. The organization ceased operations in 1994.

- b. In response to a question from Senator Durbin, you explained that you were “not sure I was in the leadership at any time of that group.” The *Tulsa World* reported that you served as a Director or Adviser of the group. Were you ever in a leadership role at any time, and if so, what role(s) and when?**

I was never in a leadership role in that group.

- c. What specific issues did you discuss at the Brother House meetings you attended?**

Although those two or three meetings occurred over 25 years ago and I have no specific recollection of a particular meeting or discussion, I suspect that we discussed how to be better husbands and fathers.

- d. What role did “loosely adopted Indian rituals” play in the organization’s programming? Which rituals did you participate in during your attendance at Brother House meetings?**

I do not know. My entire involvement consisted of attending two or three one-hour discussion group meetings between 1990 and 1992. I never was present when any type of ritual, Indian or otherwise, occurred nor did I ever hear of a ritual of any type occurring. I never attended a retreat, lodge or ritual.

- e. Question 11(b) of the Questionnaire asks whether a nominee is a member of an organization which “currently discriminate[s] or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.” At your hearing, Senator Durbin asked whether Brother House was a men-only organization. You responded, “I think so.” Confirm whether, at any time during your membership in Brother House, it excluded women, and if so when.**

A woman is listed as a Director of the Brother House in the attached copy of a brochure from Brother House of Tulsa. That fact would negative an assertion of gender discrimination.

7. On page 25 of your Questionnaire, you describe your role as lead counsel in a property dispute between Presbyterian Church USA and a local church affiliate, Kirk of the Hills. In 2006, Kirk of the Hills and others failed to persuade national church leaders to maintain their policy barring LGBT individuals from leadership positions, including as clergy members. Subsequently, Kirk of the Hills voted to leave the national Presbyterian Church and proceeded to litigate the ownership of the real property in Oklahoma on which the local church building was situated. The parties reached a settlement agreement in 2008, which allowed Kirk of the Hills to buy the property from Presbyterian Church USA.

a. How did you come to represent Kirk of the Hills in this dispute?

I cannot answer that question. I had several friends who were members in that church.

b. Was your representation on a *pro bono* basis, or were you paid for your representation?

My law firm was engaged on an hourly fee basis.

8. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), 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?

I do not recall anyone in the Administration asking me for my views on administrative law.

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"?

If confirmed, I will faithfully apply all Supreme Court and Tenth Circuit precedents relating to administrative law.

9. 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.

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

I have answered each of these questions.

DIRECTORS AND ADVISORS

Rev. William Clark is a Pastor at Redeemer Covenant Church, Tulsa, Oklahoma.

Rev. Clyde Glandon is Associate Rector of Trinity Episcopal Church, Tulsa, Oklahoma.*

Dr. Ed Maillet is Executive Director of Catholic Charities, Tulsa, Oklahoma.

Rita McCarthy is a counselor at Christian Family Institute, Tulsa, Oklahoma.*

John O'Connor is an attorney and involved in lay ministry at Christ the King Church.

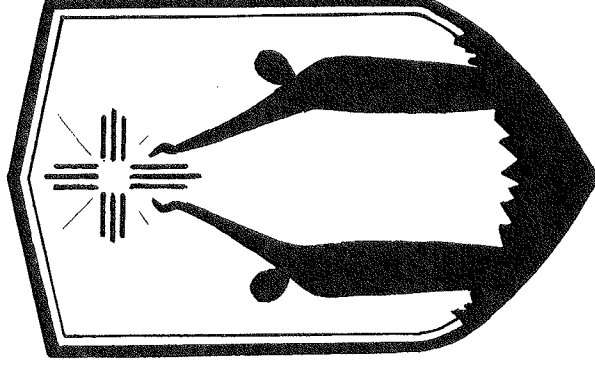
Tim Sullivan is an attorney and a member of the Church of St. Mary.*

Bill Yeakey, Jr., is an accountant and involved in lay ministry at Christ United Methodist Church.*

**Denotes Director*

BROTHER HOUSE OF TULSA

A CENTER FOR MALE SPIRITUALITY



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There are many obstacles to spiritual growth which are peculiar to men. Men have been encouraged by our culture to concentrate on self-gratification and the acquisition of money and power. As a result of emphasis on independence and not showing vulnerability, men resist intimate relationships with others. All of these influences interfere with the ability of men to know and experience Christ and to follow God's will. Men must examine conventional notions of masculinity and arrive at a deeper, richer understanding of maleness and of the ways men can better serve God and their brothers and sisters.

PURPOSE

Brother House of Tulsa is a non-profit, ecumenical organization formed for the purpose of promoting the spiritual development of men in the Tulsa metropolitan area. The mission of the Brother House is to celebrate the presence of Christ in every brother.

SPECIFIC OBJECTIVES

The specific goals of the Brother House are:

1. Proclaiming the special need for promoting the spiritual development of men;
2. Gathering resources that focus on male spiritual formation;
3. Promoting the formation of men's sharing groups within individual church communities.

RESOURCES

1. Speakers who can address issues relating to male spirituality.
2. A library and reading room for sharing books, pamphlets, video tapes and cassette tapes on the subject of male spirituality.
3. Space for small discussions, night classes and private, individual discussions.
4. Seminars, conferences and retreats for men in the Tulsa metropolitan area.
5. The "Tulsa Brother" newsletter, presenting views on issues relating to male spirituality and containing information on resources and programs available to men in the Tulsa metropolitan area.

The Brother House hopes to offer counselling services for men in the future. Until such services can be provided by Brother House, the organization can make referrals to counsellors in the Tulsa area who share its Christian perspective.

God's plan is this: to make known his secret to his people, this rich and glorious secret which he has for all peoples. And the secret is this: Christ is in you, which means that you will share the glory of God.

Colossians 1:27