

**Nomination of Thomas Lee Robinson Parker to the  
U.S. District Court for the Western District of Tennessee  
Questions for the Record  
Submitted September 13, 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: Supreme Court precedent is always binding on district courts unless and until the United States Supreme Court decides to overturn or alter a prior decision. Moreover, a district court must follow the precedent established by the circuit court in which the district court resides. If I am fortunate enough to be confirmed as a district judge, I will follow such precedent to the best of my ability.

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

Response: Because Supreme Court precedent and that of the relevant circuit court is always binding on the district court, it is not appropriate for a district court judge to question or deviate from such binding precedent. While some uncommon cases could present issues in which there are divergent views among the Circuit Courts of Appeals and a district court judge may reference the alternative views of other circuits, the district court would remain bound to follow the precedent established by the circuit court in which it resides.

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: Because a district court must always follow the precedent of the United States Supreme Court, terms such as “super precedent” are not particularly useful for the lower courts. As a practical matter, all precedent of the Supreme Court could be described as “super precedent.” *Roe v. Wade* is a case decided by the U.S. Supreme Court, and it is binding precedent for all district courts. If I am fortunate enough to be confirmed as a district judge, I will follow all binding precedent to the best of my ability.

**b. Is it settled law?**

Response: Like all other decisions of the United States Supreme Court, *Roe v. Wade* is binding precedent and district courts are bound to adhere to it. If I am fortunate enough to be confirmed as a district judge, I will follow such precedent to the best of my ability.

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 United States Supreme Court, *Obergefell v. Hodges* is binding precedent and district courts are bound to adhere to it. If I am fortunate enough to be confirmed as a district judge, I will follow such precedent to the best of my ability.

- b. On Friday, 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. It is my understanding that *Pidgeon v. Turner* is pending review by the United States Supreme Court, as the City of Houston recently filed a petition for writ of certiorari. According to Canon 3(A)(6) of the Code of Conduct for United States Judges, “A judge should not make public comment on the merits of a matter pending or impending in any court.” The commentary for Canon 1 states that the Code is “designed to provide guidance to judges and nominees for judicial office.” Therefore, I cannot comment.

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: Like all other decisions of the United States Supreme Court, *District of Columbia v. Heller* is binding precedent, and district courts must follow it. I cannot give my personal views of Justice Stevens's dissenting opinion because there are pending cases in courts around the country as to the interpretation of *Heller*. Moreover, if I am fortunate enough to be confirmed as a district court judge, this issue could be brought before the court. I respectfully cannot provide further comment. See Canon 3(A)(6), Code of Conduct for United States Judges and Commentary to Canon 1.

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

Response: As a nominee for the district court, I think it would be inappropriate for me to opine about issues that could potentially come before the court, if I were fortunate enough to be confirmed. Moreover, as noted above, all precedent of the United States Supreme Court are binding on the district court. I will faithfully and to the best of my ability adhere to all binding precedent from the United States Supreme Court, including *Heller*.

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

Response: In my legal career, I have not litigated issues related to *Heller*, nor have I studied the *Heller* opinion in the context of earlier Supreme Court precedent. If I am fortunate enough to be confirmed, I will faithfully and to the best of my ability adhere to all binding precedent from the United States Supreme Court, including *Heller*.

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: Like all other decisions of the United States Supreme Court, *Citizens United v. FEC* is binding precedent, and district courts must follow it. Under the Code of Conduct for United States Judges, I do not think it is appropriate for me to provide my views of *Citizens United*. If I am fortunate enough to be confirmed, I will faithfully and to the best of my ability follow all binding precedent from the United States Supreme Court, including *Citizens United*.

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

Response: Please see my response to Question 5a.

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

Response: Please see my response to Question 5a.

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

Response: On Wednesday, September 13, 2017, I received the questions for the record from the United States Department of Justice Office of Legal Policy (OLP). After reviewing the questions, I conducted research and drafted responses to the questions. On Monday, September 18, 2017, I shared the draft responses with OLP. I discussed the questions and my responses with OLP. I made some edits and finalized my responses for submission. I then authorized OLP to submit the responses to the Senate Judiciary Committee.

Senate Judiciary Committee  
“Nominations”  
Questions for the Record  
September 6, 2017  
Senator Amy Klobuchar

**Question for Mr. Parker, Nominee to be United States District Judge for the Western District of Tennessee**

I understand that you served as an Assistant United States Attorney in the Western District of Tennessee for nine years, the same District to which you have now been nominated.

- As a former prosecutor myself, I want to ask: How will your experience as a prosecutor inform your work as a federal judge?

Response: My experience as an Assistant United States Attorney (AUSA) is invaluable to me. I learned a great deal about trying cases, federal criminal procedure, applying prosecutorial discretion and the gravity of charging someone with a federal offense. That experience is part of who I am today so it will, in part, inform my role as a district court judge, if I am fortunate enough to be confirmed. However, it is important to note that I have been practicing law for twenty-eight years and my tenure as an AUSA amounts to approximately one-third of my legal career. My law practice has included serving as defense counsel to those facing criminal charges and that experience is also quite important to me. It will also inform my role as a district court judge, should I be confirmed. In addition, I have represented individuals and corporations in civil litigation, both plaintiff and defense, in federal and state courts. My civil litigation experience is also important to me. And it will inform my role as a district court judge. If I am fortunate enough to be confirmed, I hope and trust that my life experience, both professional and personal, will enable me to fulfill the role of judge without favoritism to any faction or party and, instead, faithfully and impartially adhere to the law.