

**Nomination of Annemarie Axon to the
U.S. District Court for the Northern District of Alabama
Questions for the Record
Submitted September 27, 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?**

It is never appropriate to depart from precedent.

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

The only time it would be appropriate for me to question Eleventh Circuit or Supreme Court precedent would be in a situation where the majority of other circuits considered and rejected Eleventh Circuit precedent in ruling on the same issue. In that limited situation, I believe it would be appropriate for my opinion to reference the decisions of the other circuits but apply the precedent of the Eleventh Circuit.

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"?**

I agree that *Roe v. Wade* is binding precedent. And, I am generally aware of the terms "super-stare decisis" and "superprecedent." I hesitate in voicing agreement that a particular case is super-stare decisis or superprecedent because, as a district court judge, all precedent falls within the definition of superprecedent.

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

It is binding United States Supreme Court 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?

It is binding United States Supreme Court precedent.

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*?

I have not read the Texas Supreme Court’s decision in Pidgeon, and I am unaware both its facts and the specific legislation at issue. Additionally, because a similar issue may be presented to me if I am fortunate enough to be confirmed, it would not be appropriate for me to give an opinion.

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?

Respectfully, it would be inappropriate to articulate a personal opinion of Justice Stevens’ dissent. The Supreme Court has held that the Second Amendment protects an individual’s right to possess guns. I am bound by that decision.

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

It would be inappropriate for me to articulate an opinion on this matter. My understanding of the Court’s decision in *Heller* is that the Court acknowledged the existence of appropriate gun regulation and the possibility of additional regulation. See *District of Columbia v. Heller*, 554 U.S. 570 at n. 26 (2008).

c. Did *Heller*, in finding an individual right to bear arms, depart from decades

of Supreme Court precedent?

The Supreme Court held that its opinion in *Heller* is consistent with prior Supreme Court precedent.

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?

The Supreme Court has held that corporations have First Amendment rights. It would be inappropriate for me to express an opinion on the matter.

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

It is not appropriate for me to express any opinion on this issue.

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

It is not appropriate for me to express any opinion on this issue.

6. Please explain your view of the appropriate temperament of a judge. Do you believe you have the appropriate temperament to be a judge?

I believe it is critically important for a judge to be fair, open-minded, courteous and respectful to the attorneys and the parties in each case. I believe my temperament is well suited to be a judge. I am mindful of the fact that, for some, the interaction they have with the court may be their only personal experience with their government. If confirmed, I would conduct myself and my courtroom in a manner that strives to leave people with the conviction that they were treated fairly, respectfully, and that I followed the law, regardless of the outcome.

7. You have fairly limited trial experience overall—according to your Questionnaire, you have been associate counsel or co-counsel on just three cases that were tried to verdict or judgment. What steps are you undertaking to prepare to assume the responsibilities of a federal district court judge, if you are confirmed?

As with so many litigators, most of my cases settle right before trial. In preparation for trial, many of the evidentiary issues are resolved and some of the trial testimony is taken. I am sure the benefit of those experiences will be helpful to me. To further prepare to assume the responsibilities I will have if confirmed, I will continue to prepare the cases I currently have for trial. I will also continue my general legal education by keeping

myself informed of developments in the law. Finally, I have made inquiries about future trial settings to both state and federal judges in an effort to observe as much as possible.

8. Additionally, according to your Questionnaire, you do not have any experience with criminal law.

a. Specifically, what steps are you undertaking to prepare yourself to hear criminal cases?

I have always been intellectually curious about matters affecting our constitutional rights and therefore make an effort to keep abreast of cases before the Supreme Court, including those involving both procedural and substantive criminal law. After my name was sent to the White House for consideration, I began the process of reviewing relevant case law in order to better understand these issues. I also reached out to the Chief Judge of the United States District Court for the Northern District of Alabama, who provided me with additional reading material in order to further educate me on these important matters. In addition to this independent research, I have attended –and will continue to attend –criminal hearings. And, I have accepted an invitation to meet with a representative from the United States Attorneys’ Office and a member of the criminal defense bar to familiarize myself with various procedural and substantive issues.

b. How will you familiarize yourself with the requirements of the Speedy Trial Act, a defendant’s right to counsel, a defendant’s right against self-incrimination, prosecutors’ obligations under *Brady v. Maryland* and *Giglio v. United States*, and other critical aspects of criminal proceedings?

Please see my response to 8(a).

9. A federal district court judge’s responsibilities are not limited to trials but also include making decisions regarding sufficiency of evidence and procedural propriety, such as reviewing search and arrest warrant applications, monitoring various electronic evidence gathering methods, or determining pre-trial detention and release conditions.

a. How familiar are you with the procedural and substantive rules that govern these various pre-trial hearings and investigative tools?

Please see my response to 8(a).

b. If you have no experience with these critical issues, how do you plan to educate yourself to understand these issues before you preside over any such matter?

Please see my response to 8(a).

10. District court judges often say that the most difficult aspect of their job is sentencing defendants. Judges also comment that one of the most complicated legal areas are

decisions involving the United States Sentencing Guidelines. How do you plan to familiarize yourself with the Guidelines, and, more importantly, how do you plan to prepare yourself to sentence criminal defendants?

I intend to read the Guidelines in order to familiarize myself with them and continue to observe sentencing hearings.

11. You stated in your Questionnaire that you filmed a commercial for the Shelby for Senate primary campaign in 2016, regarding “Senator Shelby’s opposition to President Obama’s treaty with Iran relating to its nuclear program.” You also stated that “To the best of my knowledge, the commercial never ran on media.”

a. Is this the commercial you filmed, or a different commercial?

<https://www.youtube.com/watch?v=kaxx8kZMI0U>

This is the commercial I filmed.

b. Please describe the process by which you came to film this campaign ad, including how you were initially approached about filming it.

I was contacted by a friend who was a volunteer with Senator Shelby’s campaign. He explained that they were looking for people willing to speak on the Senator’s behalf and asked if I would volunteer my time and film a commercial. I agreed. Sometime after filming and before the primary, Senator Shelby’s campaign manager informed me that the campaign was not using the commercial.

12. What assurances or evidence can you give the Committee and future litigants who come before you that you will be fair and impartial to everyone who appears before you, if confirmed—including towards those whose political views differ from yours?

As a litigator, I appreciate the critical importance of impartiality and fairness. I believe the respect both attorneys and parties have for a judge and the courts is, in large measure, derived from their opinion of that judge’s impartiality and fairness. If I am fortunate enough to be confirmed, I will swear an oath of fairness and impartiality that I pledge to abide by as a judge.

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

I received these questions on the evening of Wednesday, September 28, 2017, with instructions to return them to the Office of Legal Policy, and read them. After reading the question about the commercial for Senator Shelby, I did the same searches on

www.youtube.com that I performed in my initial attempt to locate the commercial for my Senate Judiciary Questionnaire. Unable to find the commercial through those searches, I used the hyperlink provided in this document to confirm that it was the commercial I filmed. I went through each of the remaining questions, carefully considered them, occasionally researched a discrete issue, and wrote my answer. Once complete, I sent the document to the Office of Legal Policy pursuant to the instructions I received.

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QUESTIONS FROM SENATOR WHITEHOUSE

1. According to your questionnaire, you have been involved in only four trials, none of which have been criminal cases. You were also given a minority rating of “Not Qualified” by the ABA. What do you think should be the basic qualifications of a federal judge? Given your acknowledged lack of criminal law experience, what will you do to ensure that you will be able to competently adjudicate your criminal docket as a federal district court judge? Do you believe you require further training to be able to do so?

The first qualification of a federal judge must be a steadfast commitment to fairness, impartiality, and the law. The candidate should have the education, training, and experience (whether it be through pretrial litigation, mediation, arbitration, or trial) to understand and resolve issues that will come before him or her. Additionally, the candidate should possess a keen intellect coupled with an appreciation for hard work and a desire to continually educate themselves. Finally, a candidate must be willing to seek out and participate in opportunities to develop and grow their skills as a judge regardless of how long they have been on the bench. I possess all of these qualifications.

In preparation for criminal matters that will come before me if I am fortunate to be confirmed, I am in the process of reviewing relevant case law in order to better understand procedural and substantive matters of criminal law. I also reached out to the Chief Judge of the United States District Court for the Northern District of Alabama, who provided me with additional reading material in order to further educate me on these important matters. In addition to this independent research, I have attended criminal hearings. And, I have accepted an invitation to meet with a representative from the United States Attorneys’ Office and a member of the criminal defense bar to familiarize myself with various procedural and substantive issues.

2. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”
 - a. Do you agree with Justice Roberts’ metaphor? Why or why not?

While not particularly well versed in baseball, I agree with the premise. I think anytime a judge tries to get on the field, to borrow the metaphor, it impugns their impartiality.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

A judge should faithfully and impartially follow the law, regardless of her opinion of the consequences.

- c. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a judge to make a subjective determination?

I do not. It is hard to imagine a circumstance in which the materiality of a fact would be in question for a district judge, given the immense body of law he or she is bound to follow. And, evidence that a fact is disputed is objectively determinable. Where a judge is presented a set of facts, the materiality of which is unclear, summary judgment would be improper and thus no subjective determination would be necessary.

3. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old.”
 - a. What role, if any, should empathy play in a judge’s decision-making process?
 - b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?
 - c. Do you believe you can empathize with a “young teenage mom,” or understand what it is like to be “poor or African-American or gay or disabled or old”? If so, which life experiences lead you to that sense of empathy? Will you bring those life experiences to bear in exercising your judicial role?

I do not believe that a judge’s personal views or experience, regardless of how they are informed, should play any role in the decision-making process. I believe that our democracy demands an independent judiciary whose decisions are based exclusively on the law, as it is written. I do, however, believe that my own life experiences and the things I have learned from those with different life experiences, will inform how I *treat* those who come before me to have their case decided.

My work to provide pre-school education to underprivileged children and with victims of domestic violence plays an important part in my life. So too, has my work providing girls the opportunity to build their confidence while encouraging physical exercise. And, my own life has been deeply enriched through the life of my beloved nephew, whose progressive, degenerative neurological disorder has left him profoundly disabled. The experiences I have had with all of these people convinces me that you cannot truly identify with a person whose experience is different than yours and that inserting your personal opinion of their experience can often be a disservice. What I *can* do—and pledge to do—is to treat everyone who comes before me the exact same way I want to be treated: fairly, without bias, and with kindness and respect.