

**Nomination of Hala Y. Jarbou to the United States District Court for the  
Western District of Michigan  
Questions for the Record  
Submitted July 1, 2020**

**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 never 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 a concurring opinion? What about a dissent?**

No. It is not proper for a district court judge to question Supreme Court precedent in a concurring opinion or in a dissent.

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

District court decisions are not binding precedent. Therefore, one district court can issue a ruling that disagrees with another district court, provided that ruling does not conflict with any published decision of its circuit or the U.S. Supreme Court. A district court can also reconsider a ruling previously made in a case pursuant to the standards set out in Federal Rules of Civil Procedure 59 and 60.

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

The Supreme Court determines if, and when, it is appropriate to overturn its own precedent. It would be inappropriate for me as a district court nominee to opine on if, or when, the Supreme Court should overturn its own 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 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”?**

All Supreme Court decisions are precedent and binding on the lower courts. If confirmed as a district court judge, I will fully and faithfully apply all those precedents.

**b. Is it settled law?**

Yes. If confirmed as a district court judge, I will fully and faithfully apply *Roe* and all other precedents.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

Yes. If confirmed as a district court judge, I will fully and faithfully apply *Obergefell* and all other precedents.

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?**

As a district court nominee, it would be inappropriate under Canon 2A of the Code of Conduct for United States Judges to opine on the propriety of any portion of an opinion of the Supreme Court. If confirmed as a district court judge, I will fully and faithfully apply all Supreme Court precedent.

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

The Supreme Court stated in *Heller* that “the right secured by the Second Amendment is not unlimited.” The Court further stated that “nothing 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?**

As a district court nominee, it would be inappropriate under Canon 2A and 3A(6) of the Code of Conduct for United States Judges to opine on the propriety of any portion of an opinion of the Supreme Court. If confirmed as a district court judge, I will fully and faithfully apply all 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?**

As a district court nominee, it would be inappropriate under Canon 2A and 3A(6) of the Code of Conduct for United States Judges to opine on the propriety of any portion of an opinion of the Supreme Court. If confirmed as a district court judge, I will fully and faithfully apply all Supreme Court precedent.

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

As a district court nominee, it would be inappropriate under Canon 2A, 3A(6), and 5 of the Code of Conduct for United States Judges to express a view on this issue. If confirmed as a district court judge, I will fully and faithfully apply all Supreme Court precedent.

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

As a district court nominee, it would be inappropriate under Canon 2A, 3A(6), and 5 of the Code of Conduct for United States Judges to express a view on this issue. If confirmed as a district court judge, I will fully and faithfully apply all Supreme Court precedent.

6. Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?

The First Amendment precludes Congress from making any laws that prohibit "the free exercise" of religion and the Fourteenth Amendment applies that prohibition to the states. As there is a good amount of precedent on this topic, as a district court nominee it would be inappropriate under Canons 2A and 3A(6) of the Code of Conduct for United States Judges to comment on any portion or grade any opinion of the Supreme Court. If confirmed as a district court judge, I will fully and faithfully apply all Supreme Court precedent applicable to this issue.

7. Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk's sincerely held religious beliefs?

In *Loving v. Virginia*, 388 U.S. 1, 12 (1967), the U.S. Supreme Court held that laws prohibiting interracial marriage violate the Equal Protection Clause of the Fourteenth Amendment. If confirmed as a district court judge, I will fully and faithfully apply *Loving* and all other precedents.

8. Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist's sincerely held religious beliefs?

Please see my answer to Question 7.

9. You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 2011. The Federalist Society's "About Us" webpage explains the purpose of the organization as follows: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law." It says that the Federalist Society seeks to "reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community."

- a. Could you please elaborate on the "form of orthodox liberal ideology which advocates a centralized and uniform society" that the Federalist Society claims dominates law schools?**

I have not read that portion of the Federalist Society's website. I do not know what the author of that statement was trying to convey.

- b. How exactly does the Federalist Society seek to "reorder priorities within the legal system"?**

I have not read that portion of the Federalist Society's website. I do not know what the author of that statement was trying to convey.

- c. What "traditional values" does the Federalist society seek to place a premium on?**

I have not read that portion of the Federalist Society's website. I do not know what the author of that statement was trying to convey.

- d. Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.**

I have not had any contact with any representative of the Federalist Society. I have had general conversations about the nominations process with many members of the legal community, including some who may be members of the Federalist Society.

- e. Was it at any time communicated to you that membership in the Federalist Society would make your judicial nomination more likely? If so, who communicated it to you and in what context?**

No.

In January 2020, the Committee on Codes of Conduct of the U.S. Judicial Conference circulated a draft ethics opinion which stated that “membership in the ACS or the Federalist Society is inconsistent with obligations imposed by the Code [of Judicial Conduct].” (*Draft Ethics Opinion No. 117: Judges’ Involvement With the American Constitution Society, the Federalist Society, and the American Bar Association* (Jan. 2020))

- f. Were you aware of this ethics opinion? If so, did you consider relinquishing your membership when you were nominated for this position? If not, why not?**

I was not aware of this ethics opinion. If any ethics opinion as it relates to the Code of Conduct for United States Judges indicates that membership in any organization is inconsistent with obligations imposed by the Code of Conduct, I will relinquish my membership.

- g. If confirmed to the District Court, will you relinquish your membership in the Federalist Society? If not, how do you reconcile membership in the Federalist Society with Canon 4 of the Code of Judicial Conduct?**

If any ethics opinion as it relates to the Code of Conduct for United States Judges indicates that membership in any organization is inconsistent with obligations imposed by the Code of Conduct, I will relinquish my membership.

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

No, I do not recall anyone asking me any questions regarding 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”?**

As it relates to administrative law, or any other issue, I will follow Sixth Circuit and Supreme Court precedent in making my rulings.

11. Do you believe that human activity is contributing to or causing climate change?

As a district court nominee, it would be inappropriate under Canon 2A, 3A(6), and 5 of the Code of Conduct for United States Judges to express a view on this issue. If confirmed as a district court judge, I will fully and faithfully apply all Supreme Court precedent.

12. When is it appropriate for judges to consider legislative history in construing a statute?

One canon of statutory construction provides for the review of legislative history when the plain language of a statute is ambiguous. However, as the Supreme Court has noted, “the more fundamental point is . . . [l]egislative history, for those who take it into account, is meant to clear up ambiguity, not create it.” *Milner v. Dep’t of Navy*, 562 U.S. 562, 574 (2011), citations omitted. “[T]he authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

13. 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.

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

I reviewed these questions after receiving them from DOJ's Office of Legal Policy (OLP). I also reviewed my own Senate Judiciary Questionnaire, any materials referenced by these questions, and any relevant case law. I drafted responses to these questions and then forwarded them to OLP staff. I then finalized these responses on my own.