

**Nomination of Holly Teeter to the
U.S. District Court for the District of Kansas
Questions for the Record
Submitted October 24, 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 for a district court judge to depart from the Supreme Court's or the relevant circuit court's precedent.

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

It is never appropriate for a district court judge to depart from the Supreme Court's or the relevant circuit court's precedent. In limited circumstances, a district court may note that other circuits have reached an alternative holding. But the district court remains bound by the relevant circuit court's 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"?**

I have not read Justice Gorsuch's textbook and am not familiar with the terms "super-stare decisis" and "superprecedent." But, if I am fortunate enough to be confirmed, I would faithfully and to the best of my ability apply *Roe v. Wade* and all other precedent of the Supreme Court and the United States Court of Appeals for the Tenth Circuit.

- b. Is it settled law?**

Yes, *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?**

Yes, *Obergefell* is binding 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 *Pidgeon v. Turner*. It is my understanding, however, that the City of Houston filed a petition for writ of certiorari in that case, and the petition is pending review by the United States Supreme Court. Under 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?**

Because this is an issue that might come before me if I am fortunate enough to be confirmed, I think it is inappropriate for me to offer an opinion. *See* Canon 3(A)(6), Code of Conduct for Federal Judges. If I am confirmed, I will faithfully and to the best of my ability apply all precedent of the Supreme Court and the United States Court of Appeals for the Tenth Circuit.

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

Because this is an issue that might come before me if I am fortunate enough to be confirmed, I think it is inappropriate for me to offer an opinion. *See* Canon 3(A)(6), Code of Conduct for Federal Judges. I note, however, that the *Heller* opinion includes the following passage: “[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?

I have not studied the Supreme Court’s decisions on this topic that pre-date *Heller*. If I am fortunate enough to be confirmed, I will faithfully and to the best of my ability apply *Heller* and all precedent of the Supreme Court and the United States Court of Appeals for the Tenth 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?

Like all decisions of the United States Supreme Court, *Citizens United v. FEC* is binding precedent, and lower courts must follow it. Because this is an issue that might come before me if I am fortunate enough to be confirmed, I think it is inappropriate for me to offer an opinion. *See* Canon 3(A)(6), Code of Conduct for Federal Judges. If I am confirmed, I will faithfully and to the best of my ability apply *Citizens United v. FEC* and all precedent of the Supreme Court and the United States Court of Appeals for the Tenth Circuit.

b. What is the right way to balance individual’s First Amendment rights when corporations can, in effect, silence an individual through monetary spending?

Please refer to my response to Question 5a.

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

I think the appropriate temperament of a judge means that the judge exhibits open-mindedness, professionalism, civility, a strong work ethic, a commitment to public service, and stewardship. Yes, I think I possess these qualities and have the appropriate temperament to be a judge.

7. What steps are you undertaking to prepare to assume the responsibilities of a federal district court judge, if you are confirmed?

If I am fortunate enough to be confirmed, I am taking several steps to prepare me to assume the responsibilities of a federal district court judge. For example, I am

taking advantage of the resources offered by the Federal Judicial Center, discussing various issues with federal judges and practitioners, and reviewing case law and treatises.

8. The American Bar Association's Standing Committee on the Federal Judiciary (ABA SCFJ) has not yet issued a formal rating on your nomination. According to the ABA SCFJ, "The Committee believes that a nominee to the federal bench ordinarily should have at least twelve years' experience in the practice of law. In evaluating the professional qualifications of a nominee, the Committee recognizes that substantial courtroom and trial experience as a lawyer or trial judge is important. Due consideration will be given to distinguished accomplishments in the field of law or experience that is similar to in-court trial work – e.g., appearances before or service on administrative agencies or arbitration boards, trial experience before tribal courts, or teaching trial advocacy – and may be considered as a substitute for a nominee's lack of substantial courtroom experience." You graduated from law school in 2006.

a. What do you believe are your strongest qualifications to be a federal district court judge?

I think I have a variety of personal and professional experiences that qualify me to be a federal district court judge. I have worked as a patent law clerk at a federally funded research laboratory, a litigation associate at a law firm, a law clerk to two experienced federal trial court judges, and an Assistant United States Attorney. Although each of these experiences has taught me valuable lessons that will assist me as a federal judge, I think my clerking experience has been particularly valuable and is a strong qualification. For a total of five years, I assisted these federal judges with their criminal and civil dockets and worked on twelve trials. Among other things, I worked closely with the judges to resolve dispositive and non-dispositive motions, pretrial motions, evidentiary objections at trial, jury instruction disputes, post-trial motions, and, in criminal cases, sentencing issues.

b. How many times have you appeared in a federal district court on behalf of a client?

I have not kept a list of my appearances in federal court on behalf of a client. To the best of my recollection, I formally entered my appearance in a federal district court on behalf of a client in approximately eighteen cases.

c. How many times have you argued a motion in federal district court on behalf of a client?

I have not kept a list of my arguments in federal court on behalf of a client. To the best of my recollection, I argued claim construction in two different cases (one time to a federal judge and one time to a special master) and argued a motion to dismiss for lack of subject matter jurisdiction.

d. How many times have you participated in hearings in federal district court on behalf of a client?

I have not kept a list of my participation in hearings in federal court on behalf of a client. As a litigation associate at Shook, Hardy & Bacon LLP, I participated in hearings as necessary for my assigned cases. As one example, I participated in a three-week patent infringement jury trial. Although I did not put on evidence, I was in court on a daily basis assisting with the trial. As an Assistant United States Attorney, I typically participate in hearings whenever the court holds a conference, hearing, or oral argument for one of my assigned cases.

e. How many appeals have you argued in federal appellate court?

I have not argued in federal appellate court.

9. According to your Questionnaire, your legal practice has been mostly devoted to civil litigation.

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

If I am fortunate enough to be confirmed, I am preparing myself to hear criminal cases by observing federal criminal hearings and trials, reviewing Federal Judicial Center resources, discussing various aspects of criminal cases with federal judges and criminal practitioners, and reviewing case law and treatises on a variety of criminal 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?

Although my legal practice on behalf of clients has been devoted to civil litigation, I clerked for two federal trial court judges for a total of five years and assisted each judge with his criminal docket (e.g., motions, hearings, trials, etc.). In addition, I served on the Criminal Subcommittee for the Electronically Stored Information Committee of the United States District Court for the Western District of Missouri. Therefore, I am generally familiar with these aspects of criminal proceedings. If I am fortunate enough to be confirmed, I will further educate myself about these aspects of criminal proceedings by observing federal criminal hearings and trials, reviewing Federal Judicial Center resources, discussing these issues with federal judges and criminal practitioners, and reviewing case law and treatises.

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 clerked for two federal trial court judges for a total of five years and assisted each judge with his criminal docket. For one of the judges, my clerking responsibilities routinely included reviewing Presentence Investigation Reports and researching sentencing objections. Therefore, I am generally familiar with the United States Sentencing Guidelines. If I am fortunate enough to be confirmed, I will further educate myself about the United States Sentencing Guidelines and prepare myself for sentencing criminal defendants by observing federal sentencing hearings, reviewing Federal Judicial Center resources, discussing sentencing issues with federal judges, probation officers, and criminal practitioners, and reviewing case law and treatises on sentencing.

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

I received these questions on October 24, 2017. I reviewed the questions, conducted research, and drafted answers. I shared my answers with the Department of Justice's Office of Legal Policy ("OLP"). After speaking with OLP attorneys, I made revisions, finalized my responses, and authorized OLP to submit my responses.

Senator Dick Durbin
Written Questions for Holly Teeter
October 24, 2017

For questions with subparts, please answer each subpart separately.

Questions for Holly Teeter

1. The American Bar Association's Standing Committee on the Federal Judiciary states that nominees ordinarily should have at least 12 years of practical legal experience before they can be considered for the federal bench. You do not yet have 12 years of practical legal experience.
 - a. **Do you agree with the American Bar Association's Standing Committee on the Federal Judiciary that candidates for federal judgeships should have at least 12 years of practical legal experience?**

I am honored that Senator Roberts and Senator Moran believed me to be qualified to serve as a federal district court judge and recommended that President Trump nominate me. I have practiced law for eleven years, and I think it is possible for a nominee who has practiced for less than twelve years to have gained the practical legal experience needed to serve as an outstanding federal judge. Therefore, I do not think the twelve-year requirement should be applied rigidly to exclude candidates whose quality and diversity of practice, academic achievements, and other factors (e.g., commitment to the bar and public service) qualify them to serve.

The Committee believes that a nominee to the federal bench ordinarily should have at least twelve years' experience in the practice of law. In evaluating the professional qualifications of a nominee, the Committee recognizes that substantial courtroom and trial experience as a lawyer or trial judge is important. Due consideration will be given to distinguished accomplishments in the field of law or experience that is similar to in-court trial work – e.g., appearances before or service on administrative agencies or arbitration boards, trial experience before tribal courts, or teaching trial advocacy – and may be considered as a substitute for a nominee's lack of substantial courtroom experience.

- b. **Do you believe that you are better qualified to serve on the federal bench than other candidates who have more practical legal experience than you? If so, why?**

Although I believe many intelligent, experienced, and fine people have been candidates for nomination, I am not familiar with the each candidate's specific credentials and background. Therefore, I think it is inappropriate for me to say whether I am more or less qualified than any of them.

I think that I am qualified for this position based on my personal and professional experiences. I earned a chemical engineering degree from the University of Kansas, received a diploma in legal studies from the University of Oxford, and graduated first in

my law school class from the University of Kansas. After earning my law degree, I worked as a patent law clerk at a federally funded research laboratory, a litigation associate at a law firm, a federal law clerk to two experienced federal trial court judges, and an Assistant United States Attorney. Through these experiences, I have learned a great deal about civil and criminal litigation. In addition, I have been actively engaged with the bar and legal community and demonstrated a commitment to public service. Based on these experiences, I will be a sound steward of the office if I am fortunate enough to be confirmed.

**Nomination of Holly Teeter to the
United States District Court for the
District of Kansas
Questions for the Record
Submitted October 24, 2017**

QUESTIONS FROM SENATOR WHITEHOUSE

1. 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?

I agree with Chief Justice Roberts. Like an umpire who should apply the rules of the game fairly without regard to which team he or she wants to win, so too should a judge apply the law to the given facts of a case, without regard to his or her personal opinions or policy preferences.

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

The role of a judge is to apply the law to the facts of a case in a fair and unbiased manner. A judge should follow the law without regard to the consequences of his or her ruling. The legislative branch is responsible for making law and setting policy.

- 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 agree. The Supreme Court has explained that a genuine dispute as to a material fact exists when a reasonable jury could find the fact in favor of the non-moving party. *See Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). Whether a reasonable jury could find in favor of the non-moving party is an objective inquiry. I would follow the Supreme Court’s precedent irrespective of my subjective opinions about the evidence in a given case.

2. 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?

As a general rule, empathy for a party should not affect a judge’s rulings. Instead, a judge must apply the law to the facts in a fair and unbiased manner. All federal judges take an oath to “administer justice without respect to persons, and do equal

right to the poor and to the rich.” 28 U.S.C. § 453. If I am fortunate enough to be confirmed, I will abide by that oath, and I will faithfully and impartially apply the law.

- b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?

A judge’s personal life experiences should not influence his or her decision-making process. Instead, a judge must apply the law to the facts in a fair and unbiased manner. Although my personal life experiences would not impact my rulings, my experience of balancing professional demands with family and other commitments will help me to be reasonable and patient with the parties and attorneys. In addition, my parents raised me to treat all people with respect and compassion, irrespective of their backgrounds and immutable characteristics. If I am fortunate enough to be confirmed, I would do by my very best to carry out these ideals as a judge.

- 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 will never be able to fully understand another person’s life experiences. But I will have empathy for all sorts of litigants based on my own life experiences. Although these experiences have impressed on me the need to treat all persons with respect, dignity, and courtesy at all times, if I am fortunate enough to be confirmed I will take an oath to “administer justice without respect to persons” despite my personal feelings. 28 U.S.C. § 453.

3. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No, it is never appropriate for a district court judge to ignore or disregard precedent from the Supreme Court or the relevant circuit court. Similarly, a district court judge must follow and implement all orders rendered by the Supreme Court and the relevant circuit court in a given case.

**Nomination of Holly Lou Teeter, to be United States District Judge for the District of
Kansas**

**Questions for the Record
Submitted October 24, 2017**

QUESTIONS FROM SENATOR COONS

1. You graduated from law school 11 years ago and spent five of those years clerking.
 - a. If confirmed, what experience will you rely upon as you approach the task of being a federal trial court judge?

If I am fortunate enough to be confirmed, I have a variety of personal and professional experiences that I will rely upon as I approach the task of being a federal trial court judge. I have worked as a patent law clerk at a federally funded research laboratory, a litigation associate at a law firm, a law clerk to two experienced federal trial court judges, and an Assistant United States Attorney. Although each of these experiences has taught me valuable lessons, I think my clerking experience has been particularly instructive. For a total of five years, I assisted two federal judges with their criminal and civil dockets and worked on twelve trials. Among other things, I worked closely with the judges to resolve dispositive and non-dispositive motions, pretrial motions, evidentiary objections at trial, jury instruction disputes, post-trial motions, and, in criminal cases, sentencing issues. I also learned a great deal from each judge about managing a courtroom, the constant need for professionalism and civility, and the critical importance of an open mind and an unbiased review of each case.

- b. Why do you believe you are presently qualified to be a federal judge?

I think I am qualified to be a federal judge based on the personal and professional experiences discussed above. Through these experiences, I have learned about civil and criminal litigation, developed skills for managing a busy docket and crowded courtroom, realized the constant need for professionalism and civility, and learned the critical importance of an open mind and an unbiased review of each case.

- c. You have spent a significant portion of your legal career as a judicial law clerk. If confirmed, what will you do ensure you fully understand the challenges and perspectives of the parties and the counsel appearing before your court?

As discussed above, I learned a great deal from my clerking experience. But I also learned a variety of skills from my years in private practice. For example, I experienced the multiplicity of demands on attorneys and the long hours attorneys spend working on motions, discovery, hearings, and trials. I would bring these experiences with me to the bench if I am fortunate enough to be confirmed. In addition, to ensure that I understand the challenges and perspectives of the parties and counsel appearing before me, I will make myself available to the parties and counsel to discuss case issues at scheduling conferences, status conferences, and hearings.