

**Nomination of Franklin Ulyses Valderrama to the United States District Court for the  
Northern District of Illinois  
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?**

District court judges are bound to faithfully follow Supreme Court precedent.

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

“A decision of a federal district court judge is not binding precedent.” *Camreta v. Greene*, 563 U.S. 692, 709, fn. 7 (2011). In other words, it is not binding on any other judge in the same district or even upon the same judge in a different case. *Id.* A district court judge would be duty bound to depart from a prior ruling if a Supreme Court or Seventh Circuit ruling overturned that prior decision.

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

The Supreme Court and the Supreme Court alone, determines when it is appropriate to overturn its precedent. *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997). As a nominee to the district court, it would be inappropriate for me to offer an opinion regarding the circumstances in which it would be appropriate for the Supreme Court to overturn its 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”?**

I have not studied the writings referenced above and am not familiar with the concept of “super-stare decisis” or “superprecedent.” However, *Roe v. Wade* is binding Supreme Court precedent and if confirmed, I will fully and faithfully follow all Supreme Court precedent, including *Roe v. Wade*.

**b. Is it settled law?**

Yes.

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, I will fully and faithfully follow all Supreme Court precedent, including *Obergefell*.

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 nominee to the district court, I do not believe it would be appropriate for me to offer my personal opinion on whether I agree with particular Supreme Court opinions (including dissents), especially on matters that might come before me. See Canon 3(A)(6), of the Code of Judicial Conduct for United States Judges. If confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and Seventh Circuit.

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

In *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008), the Supreme Court acknowledged that “the right secured by the Second Amendment is not unlimited.” The Court also stated that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possessions 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.” *Id.*

As the scope of the Second Amendment is a topic of pending and impending litigation, it would be inappropriate for me, as a nominee to the district court, to comment on what specific regulations may or may not be constitutionally permissible. See Canons 2(A), and 3(A)(6) of the Code of Judicial Conduct for United States Judges.

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

As a nominee to the district court, it would be inappropriate for me to offer my personal views on the merits of Supreme Court decisions. See Canon 3(A)(6), of the Code of Judicial Conduct for United States Judges. If confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and Seventh 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?**

The Supreme Court’s decision in *Citizens United v. FEC*, 558 U.S. 310 (2010) is binding precedent. As a nominee to the district court, it would be inappropriate for me to offer my personal views on Supreme Court decisions. See Canon 3(A)(6), of the Code of Judicial Conduct for United States Judges. If confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and Seventh Circuit.

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

Please see my answer to Question 5(a).

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

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, the Supreme Court held that the Religious Freedom Restoration Act applied to closely-held corporations. *Hobby Lobby* is binding Supreme Court precedent. If confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and Seventh Circuit.

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

The rights to free exercise of religion and equal protection of the laws are guaranteed by the Constitution. As a nominee to the district court, it would be inappropriate for me to comment any further because this question is or may become the subject of litigation. See Canon 3 (A) (6) of the Code of Conduct for United States Judges.

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?

The Supreme Court has held that interracial marriage is constitutionally protected from government interference by the Fourteenth Amendment. See *Loving v. Virginia*, 388 U.S. 1 (1967). As a nominee to the district court, it would be inappropriate for me to comment any further because this question is or may become the subject of litigation. See Canon 3(A)(6) of the Code of Conduct for United States Judges.

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 answers to Questions 6 and 7 above.

9. 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.

No.

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.

- 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”?**

I have not formed any “views” on administrative law. If confirmed, I would fully and faithfully apply Supreme Court and Seventh Circuit precedent regarding administrative law.

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

I have not studied the causes of climate change and therefore, cannot provide an informed answer to this question. In addition, because the matter is or may become the subject of pending or impending litigation, I do not believe that it is appropriate for me to comment further. See Canon 3(A)(6) of the Code of Conduct for United States Judges.

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

The Supreme Court has explained, that where the text of a statute is ambiguous, legislative history can be considered. See, e.g. *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 received the questions on July 1, 2020. After reviewing the questions, I conducted research and prepared draft responses. I then forwarded my draft answers to attorneys at the U.S. Department of Justice, Office of Legal Policy, who provided comments on my draft responses. I considered the comments and prepared a final draft. I then authorized the submission of my answers to the Senate Judiciary Committee. All responses to the questions posed to me are my own.