

**Senator Grassley
Questions for the Record**

**Robert William Schroeder III,
Nominee, U.S. District Judge for the Eastern District of Texas**

- 1. How has your experience in the White House Counsel's office shaped your legal career? How do you anticipate it will affect your career as a judge, if confirmed?**

Response: My experience in the White House Counsel's Office shaped my legal career by instilling in me an appreciation for hard work, thorough preparation and attention to detail. I learned that it is important to be diligent and industrious. To the extent my experience in the office may affect my career as a judge, if I am fortunate enough to be confirmed, I believe it will be through those same values of hard work, thorough preparation and attention to detail, as well as through the respect I have for the Constitution and our system of government, particularly the separation of powers and the important but distinct roles the three branches of our government play.

- 2. What assurances can you provide the committee that you will administer justice in an impartial manner, even when a litigant may have personal beliefs or political views that are different from yours?**

Response: A fair and impartial judiciary is a hallmark of and essential to democracy, and a judge's personal beliefs or political views simply have no place in the courtroom. If I am fortunate enough to be confirmed, I will treat every litigant fairly and impartially and without regard to my own or any litigant's personal beliefs or political views.

- 3. Your questionnaire indicates that the majority of your practice has been in civil litigation. If confirmed, what steps will you take to familiarize yourself with criminal law?**

Response: While the majority of my private practice has been in civil litigation, I do have some criminal litigation experience. During the years of my practice, I have handled approximately 15 to 20 criminal matters. I also worked on a number of criminal matters during the two years of my judicial clerkship. If I am fortunate enough to be confirmed, I will work hard to bring myself appropriately up to speed by being familiar with both substantive and procedural criminal law and by utilizing the resources of the Federal Judicial Center and the Administrative Office of the United States Courts in doing so. I will dedicate myself to making sure that I am completely prepared for any criminal matter that comes before me.

- 4. What is the most important attribute of a judge, and do you possess it?**

Response: I believe the most important attribute of a judge is to have a commitment to the rule of law and an ability to approach every case with an open mind and to fairly and

impartially apply applicable law and binding precedent to the facts of each case. I believe I possess this attribute.

- 5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe good judicial temperament is critically important. Judges should be well prepared, careful, patient, courteous and respectful to litigants and counsel, and demonstrate modesty and humility. Judges should recognize their important but limited role in the process and understand that they are there to serve the public as neutral arbiters of justice. They should be diligent in their work. They should approach every case with an open mind and fairly and impartially apply applicable law and binding precedent to the facts of each case. I believe I meet this standard.

- 6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.**

Response: The doctrine of stare decisis is a cornerstone of our legal system. It brings stability and predictability to our system and increases public confidence in our courts. If I am fortunate enough to be confirmed, I will faithfully follow Supreme Court and Fifth Circuit precedents and give them full force and effect, whether I agree with such precedents or not.

- 7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If faced with a case of first impression, I would first examine whether the plain language of the applicable statute or other provision resolved the issue. If the language was clear and unambiguous, I would apply the law to the facts of the case. If not, I would look to analogous or related Supreme Court and Fifth Circuit precedent, fully and carefully considering the arguments of the parties. If there were no such precedent, I would look to relevant cases from other circuits and district courts as persuasive authority.

- 8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If I am fortunate enough to be confirmed, I would faithfully apply and follow all controlling Supreme Court and Fifth Circuit precedent without regard to any opinion I might have about whether it was decided correctly.

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Statutes enacted by Congress are presumed to be constitutional. I believe a federal court should declare a statute enacted by Congress unconstitutional only when it is clearly shown that Congress has exceeded its authority under the Constitution or acted contrary to a provision of the Constitution.

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.

Response: I do not believe it is ever proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution unless required to do so by binding Supreme Court or circuit precedent.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: If I am fortunate enough to be confirmed, I will approach every case with an open mind and fairly and impartially apply applicable law and binding precedent to the facts of each case, without regard to any political ideology or motivation.

12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: The role of a judge is to serve as a neutral arbiter of justice and to approach every case with an open mind and to treat each party fairly and impartially. If I am fortunate enough to be confirmed, any personal views I may have will have no place in the performance of my duties.

13. If confirmed, how do you intend to manage your caseload?

Response: If I am fortunate enough to be confirmed, one of my most important priorities would be to ensure that all matters I am responsible for proceed efficiently and expeditiously toward resolution. I would carefully monitor my caseload through the court’s case management system and use pretrial scheduling orders and regular status conferences to move cases forward in a timely manner. I would seek to understand as early as possible the nature of each matter and be available to the parties and counsel throughout the case. I would rule promptly on pending motions and set matters for trial.

- 14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Rule 1 of the Federal Rules of Civil Procedure describes the goal of the judicial system as securing the “just, speedy, and inexpensive determination of every action.” I believe that judges play an essential role in controlling the pace and conduct of litigation. If I am fortunate enough to be confirmed, I will actively participate in the management of cases so that matters can be fairly, efficiently and expeditiously resolved.

- 15. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: The role of a judge is fundamentally different from that of a lawyer or advocate. A lawyer’s job is to make the best arguments he or she can, reasonably and in good faith, on behalf of a client. By contrast, the role of a judge is to approach every case with an open mind, to be fair and neutral and to carefully understand the facts and impartially apply the law. If I am fortunate enough to be confirmed, I would fully and carefully review and consider all admissible evidence and argument made by the parties in briefs, other written submissions and during hearings. I would conduct independent legal research as necessary, determine the applicable precedent and faithfully apply the law to the facts. With respect to the challenges I may face if I am fortunate enough to be confirmed, I believe the two years I spent clerking for a federal judge early in my career will assist me in making the transition. In addition, although I have some criminal litigation experience, I will need to bring myself up to speed in the areas of substantive and procedural criminal law, which I plan to do through hard work and diligent study and by utilizing the resources of the Federal Judicial Center and the Administrative Office of the United States Courts.

- 16. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: I am not familiar with the context of this statement. I believe that judges should decide all cases by the careful, fair and impartial application of law and precedent to the facts of each case.

- 17. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize**

yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹

i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

Response: Yes.

ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?

Response: It is my understanding that the “lawful marriages” to which Justice Kennedy referred are those authorized by state law.

iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

Response: Yes.

iv. Are you committed to upholding this precedent?

Response: Yes. If I am fortunate enough to be confirmed, I would faithfully apply the *Windsor* decision and all other Supreme Court and Fifth Circuit precedent.

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²

i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes.

ii. Will you commit to give this portion of the Court’s opinion full force and effect?

¹ *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

² *Id.* 2689-2690.

Response: Yes. If I am fortunate enough to be confirmed, I would faithfully apply the *Windsor* decision and all other Supreme Court and Fifth Circuit precedent.

c. **Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³**

i. **Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

ii. **Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes. If I am fortunate enough to be confirmed, I would faithfully apply the *Windsor* decision and all other Supreme Court and Fifth Circuit precedent.

d. **Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴**

i. **Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

ii. **Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes. If I am fortunate enough to be confirmed, I would faithfully apply the *Windsor* decision and all other Supreme Court and Fifth Circuit precedent.

e. **Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for ‘when the Constitution was adopted the common understanding was that the**

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

domestic relations of husband and wife and parent and child were matters reserved to the States.”⁵

- i. **Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

- ii. **Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes. If I am fortunate enough to be confirmed, I would faithfully apply the *Windsor* decision and all other Supreme Court and Fifth Circuit precedent.

18. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.**

- a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

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

Response: I received the questions on September 16, 2014 and reviewed them and prepared my responses over the next two days. After discussing my responses with an

⁵ *Id.* (internal citations omitted).

official in the Office of Legal Policy at the Department of Justice and making final revisions, I authorized their submission to the Senate Judiciary Committee.

20. Do these answers reflect your true and personal views?

Response: Yes.