

**Senator Grassley
Questions for the Record**

**Staci Yandle,
Nominee: U.S. District Judge for the Southern District of Illinois**

- 1. In 2003 you gave a talk on gender and its impact in litigation and you said, “As female trial attorneys, we have a natural sensitivity to gender issues and, therefore are uniquely positioned to effectively address such issues during the litigation process.” In your view, should gender make a difference in the decision making process of a judge? Please explain.**

Response: Considerations of a judge’s gender or the gender of litigants should play no role in a judge’s decision-making process except in the limited circumstances when a litigant’s gender is relevant and material to the subject matter of the case such as in Title VII cases alleging discrimination based on gender. If confirmed, my decision making would be based upon an application of the law to the facts of each particular case.

- 2. During an interview in 2012 on ethics and professionalism you said “life in general as a black female is challenging and rough.” How does your background affect how you have practiced as an attorney? If confirmed, how will your background affect your judicial decision- making process?**

Response: The manner in which I have practiced law as an attorney has been based upon my knowledge and understanding of the law, my work ethic and principles of professional responsibility. As an African American female trial attorney, I have advocated for the increased diversity of the trial bar through the recruitment and mentorship of minorities and women. If confirmed, my judicial decision-making process would be to apply the law to the facts of each particular case and would not be affected by my background or the background of the litigants who appear before me.

- 3. It appears you have limited experience in the area of criminal law. Since being nominated, have you taken any steps to get up to speed in federal criminal law? What steps do you plan to take to prepare, if confirmed?**

Response: Since being nominated, I have made a conscious effort to become more familiar with federal criminal law and procedure. I have begun reviewing the federal sentencing guidelines, the *Manual on Recurring Problems in Criminal Trials*, Sixth Edition and the *Bench Book for United States District Judges*, Sixth Edition. If confirmed, I plan to continue my review of these and other sources including recent Supreme Court and Seventh Circuit decisions in the area of criminal law and to attend continuing education programs on criminal law offered by the Administrative Office of the United States Courts. I would also consult with my future colleagues including those who had limited experience in criminal law prior to becoming a district court judge.

4. According to your questionnaire, the majority of your legal practice has been in state court.

a. Have you handled any trials in federal court?

Response: I have tried two cases to verdict in federal court.

b. Your questionnaire indicates that approximately twenty percent of your legal practice has been in federal court. Please elaborate on the type of legal work this has included (e.g., motions practice, trials, etc...).

Response: Although I have only tried two cases to verdict in federal court, I have handled a number of cases in federal court as sole or lead counsel which were resolved prior to trial. In that regard, I have drafted and filed pleadings, conducted discovery and argued motions including dispositive motions.

c. What steps do you plan to take to prepare yourself to handle federal matters, if confirmed?

Response: During my 27 years in private practice, 20% of the cases I have handled have been in federal court. As a result, I am generally familiar with federal civil practice and procedure. If confirmed, in addition to taking the steps described in my response to question 3 with respect to federal criminal law, I will continue to stay abreast of the Federal Rules of Civil Procedure, the Federal Rules of Evidence and will attend continuing education programs offered by the Administrative Office of the United States Courts.

5. Why did you join the Illinois Gaming Board? What was your interest in casino regulation?

Response: I joined the Illinois Gaming Board because I was asked by Governor George Ryan if I would accept an appointment to the board and I agreed to serve. Prior to my appointment, I had no experience in casino regulation or the gaming industry.

a. According to press reports, the governor picked a new board member after you voted against a proposed casino. What were the circumstances surrounding your replacement?

Response: I served on the Illinois Gaming Board until my term expired. I was not reappointed by the governor upon the expiration of my term.

6. You were a member of the Civil Rights Commission which published several reports during your time with them. In your questionnaire, you said that you voted on the listed reports. Please identify *how* you voted on each report. For any report you voted against please provide your reasons for doing so.

Response: As a member of the Illinois Advisory Committee to the Civil Rights Commission, I voted to approve each of the reports prepared by the staff of the committee during my term.

7. **In an interview you gave to the Illinois State Bar Association on attorneys facing the challenges of diversity in 2008 you said, “Many of the plaintiffs who need representation look like me and there are many things, differences in our life experience in terms of understanding and perception and in telling your client’s story to a jury, that if you don’t totally understand it, that comes with difficulty. So what I’m saying to you is that our community does not have sufficient number of attorneys like us to represent us.” If a judge is a different ethnicity from the litigants before him or her or has had different life experiences, how does or should that affect the judge’s approach to the matter before him or her?**

Response: The fact that a judge has a different ethnic background or different life experiences from the litigants that appear before them should have no effect on the judge’s approach to a matter. If confirmed, I would approach each matter with neutrality and integrity regardless of the ethnicity or background of the litigants.

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

Response: The most important attribute of a judge is integrity, which includes the ability to be impartial and unbiased. I possess this attribute.

9. **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: A judge should be decisive, even-tempered, patient and respectful to all participants in the legal process as well as the public. I meet this standard.

10. **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: If confirmed, I would faithfully follow the precedents of the Supreme Court and Seventh Circuit regardless of whether or not I personally agree with such precedents.

11. **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 Justice Kennedy is referring to same-sex marriages that a State has recognized as lawful.

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. It is my understanding that the holding applies to section 3 of the Defense of Marriage Act’s prohibition against federal recognition of same-sex marriages that a State has recognized as lawful.

iv. Are you committed to upholding this precedent?

Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Seventh Circuit.

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. I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

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: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Seventh Circuit.

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. I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

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

Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Seventh Circuit.

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. I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

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

Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Seventh Circuit.

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

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

- 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. I believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

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

Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Seventh Circuit.

- 12. 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: In deciding cases of first impression, I would first look to the text of the Constitutional provision, statute or regulation in question in order to determine the plain meaning. If the language was unambiguous, I would apply the plain meaning to the facts. If the language was ambiguous, I would look to Supreme Court and Seventh Circuit decisions interpreting analogous provisions and, if necessary, decisions from other circuits for persuasive authority.

- 13. 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 confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent regardless of any personal opinions I might have.

- 14. 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 constitutional. It is only appropriate for a federal court to declare a statute enacted by Congress unconstitutional if the statute clearly exceeds congressional authority or violates a Constitutional provision.

- 15. 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: No.

- 16. 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: The integrity of our federal judicial system depends upon the commitment of its judges to follow the law as written. If confirmed, I would be guided by this principle and would decide all matters before me based upon an application of binding precedent to the facts without regard to political ideology or any other outside motivation.

17. 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: My experience in litigating cases has given me a perspective and understanding of the importance of neutrality and fairness by judges to all litigants. If confirmed, any personal views I might have would not play a role in my decision-making. Rather, I would be guided solely by the rule of law.

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

Response: If confirmed, I intend to manage my caseload by setting reasonable but firm deadlines. In addition to my own personal involvement, I would utilize court personnel and magistrate judges to facilitate the prompt resolution of pretrial matters. I would consistently monitor the advancement of cases and would dispose of cases by summary disposition when appropriate.

19. 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: I do believe judges have a role in controlling the pace and conduct of litigation. If confirmed, I would utilize the steps described in my response to question 18 in order to control and manage my docket.

20. 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: Although I have spent my career as an advocate for my clients, I understand that the role of a judge is not to advocate for any particular position or litigant but to decide matters with absolute impartiality. If confirmed, I would decide cases based upon the text of applicable statutes and the precedent of the higher courts as applied to the facts. I expect the most challenging part of the transition would be becoming more knowledgeable in criminal law and procedure. However, I am confident that I can meet the challenge through a commitment to self-study and continuing education.

21. 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”. You have indicated that you are a member of the AAJ.

a. Will you please explain your interest in and your work for the AAJ?

Response: I initially became interested in AAJ (formerly, The Association of Trial Lawyers of America) because of the availability and quality of its continuing legal education programs and the networking opportunities it offered. Over the years, in large part because I benefited from the membership support services offered by the organization and the opportunities to further develop and enhance my practice, I agreed to serve on various committees and boards within the organization.

b. 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: Yes. In April 2013, I informed John Bowman with AAJ that I was going to apply for the position of U.S. District Court Judge for the Southern District of Illinois. Various members and staff of AAJ contacted and congratulated me when I was recommended by Senator Durbin as a candidate for nomination and when I was nominated. I don’t recall the specific dates of these contacts.

c. 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.

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

Response: I received these questions on March 19, 2014 and prepared my responses on March 19-20, 2014. I submitted my responses to the Department of Justice Office of Legal Policy for review. I then finalized my responses and authorized their transmittal to the Committee.

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

Response: Yes.

Staci M. Yandle
Nominee, United States District Court for the Southern District of Illinois
Responses to Questions for the Record
From Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice’s judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If confirmed, my judicial philosophy would be to decide matters impartially and promptly. In doing so, I would apply the law to the particular facts of the case and would follow binding precedent. I have not studied or analyzed the judicial philosophies of Supreme Court Justices and am therefore unable to state which Justice’s judicial philosophy is the most analogous to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed, I would follow the guidance on constitutional interpretation enunciated by the Supreme Court, including that provided in *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *Heller*, the Court looked to the normal and ordinary meaning of words used in the Second Amendment as they were understood at the time of ratification.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: As a district court judge, I would be bound by the precedent of the Supreme Court and the Seventh Circuit Court of Appeals. I would not overrule any precedent.

Explain whether you agree that “State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power.” *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed, I would be bound by the Supreme Court’s decision in *Garcia* and subsequent decisions in which the Court identified constitutional limitations on congressional power. I would follow this precedent without regard to any personal beliefs I may have regarding the Court’s decision in this or any case.

Do you believe that Congress’ Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: While the Supreme Court has recognized limits on Congress’ power to regulate non-economic activity pursuant to the Commerce Clause, *see, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995), in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia noted that “Congress may regulate even noneconomic local activity if that

regulation is a necessary part of a more general regulation of interstate commerce.” *Id.* at 37 (Scalia, J., concurring). If confirmed, I would follow Supreme Court and Seventh Circuit precedent regarding the extent of Congress’ power under the Commerce Clause.

What are the judicially enforceable limits on the President’s ability to issue executive orders or executive actions?

Response: The Supreme Court has held that the President’s authority to act “must stem from either an act of Congress or from the Constitution itself.” *Medellin v. Texas*, 552 U.S. 491, 525 (2008) (internal citations omitted). The applicable judicial analysis that must be conducted in order for a court to determine whether a particular executive order or action is authorized by an act of Congress or the Constitution is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would follow Supreme Court and Seventh Circuit precedent in deciding any challenges to executive action.

When do you believe a right is “fundamental” for purposes of the substantive due process doctrine?

Response: Pursuant to Supreme Court precedent, fundamental rights for purposes of the substantive due process clause include “the specific freedoms protected by the Bill of Rights,” and “those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition” and which are “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Gluckberg*, 521 U.S. 702, 720-721 (1997) (internal citations and quotations omitted). If confirmed, I would follow the precedent of the Supreme Court and Seventh Circuit in determining whether a right is “fundamental” under the substantive due process doctrine.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that a classification must be subjected to heightened scrutiny under the Equal Protection Clause when the classification burdens a fundamental right or is based on race, religion, national origin, gender or illegitimacy. *See, e.g., Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-441 (1985). If confirmed, I would follow the precedent of the Supreme Court and Seventh Circuit in deciding issues under the Equal Protection Clause.

Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have no expectations as to whether or not the use of racial preferences will be necessary in public higher education 15 years from now. If confirmed, I would be bound by and would follow the Supreme Court’s holding in *Grutter*, *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and any subsequent precedent in deciding cases involving the use of racial preferences in public higher education admission decisions.