

**Questions for the Record  
Senator Chuck Grassley**

**Responses of Madeline Cox Arleo  
Nominee, United States District Judge for the District of New Jersey**

- 1. According to your questionnaire, you recently began the first re-entry court for the District of New Jersey. In regards to your role, the U.S. Attorney for the District of New Jersey stated: “The judge is helping them to register for college, find apartments, and get jobs – and is literally taking them to a charter school to help them enroll their kids.”<sup>1</sup> Could you please explain in more detail what the re-entry court does, and your role in it?**

Response: In response to the increasing recidivism rate of federal offenders, and following the models in other district courts around the country, the District of New Jersey established its first reentry court in 2013, for which I serve as presiding judge. Upon release from federal custody, the participants agree to participate in intensive supervision (semi-monthly court sessions for 52 weeks) and monitoring by the United States Probation Office in exchange for a one year reduction in their terms of supervised release. Prior to every court session, the reentry team, consisting of myself, Assistant United States Attorneys and support staff, an assistant federal public defender, and Probation officers, meet to review the progress and needs of each participant, including education, employment and housing. We also consider imposition of swift sanctions for violation of program rules. We graduated our first class of participants earlier this year. All remain gainfully employed and none have reoffended.

- 2. There are a number of different theories explaining how judges should interpret the Constitution. While all nominees recite the mantra that they will apply the law to the facts, I’m looking for answers with a little more thought behind them.**

- a. How would you describe your judicial philosophy?**

Response: Having served as Magistrate Judge for fourteen years, I have tried to develop a judicial philosophy that emphasizes fairness and impartiality, respect for the rule of law, adherence to precedent and respect for all who appear in court. My record demonstrates that I understand the importance of adherence to the precedent of the Third Circuit and the Supreme Court. If confirmed, I will continue to approach cases with this judicial philosophy.

- b. 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? Yes or no, and why?**

Response: I do not know the full context of this quotation and therefore cannot state whether I agree or disagree with this statement. However, I believe that a judge should always decide cases based on a thorough review of the record and application of settled law to the facts.

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

Response: The most important attribute of a judge is integrity. A judge must promptly and dispassionately decide all cases without regard to personal views or beliefs. I believe that throughout my fourteen years as a Magistrate Judge, I have demonstrated that I have this attribute.

**4. 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 calm, respectful, and measured at all times, regardless of the conduct of others in the courtroom, be willing to listen carefully, and conduct all proceedings fairly and with authority. I believe that throughout my fourteen years as a Magistrate Judge, I have demonstrated that I have this temperament.

**5. 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: In my fourteen years serving as a Magistrate Judge, I have demonstrated an unwavering commitment to faithfully applying the precedent of the Third Circuit and the Supreme Court. If confirmed as a District Court Judge, I will continue to do so.

**6. 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.”<sup>2</sup>**

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

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<sup>2</sup> *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

Response: Yes.

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

Response: My understanding is that Justice Kennedy was referring to marriages made lawful by the State.

- 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 confirmed, I would uphold *Windsor* and all Supreme Court 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.”<sup>3</sup>**

- 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 confirmed, I would uphold *Windsor* and all Supreme Court precedent.

- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”<sup>4</sup>**

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<sup>3</sup> *Id.* 2689-2690.

<sup>4</sup> *Id.* 2691.

- 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 confirmed, I would uphold *Windsor* and all Supreme Court 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.’”<sup>5</sup>**

- 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 confirmed, I would uphold *Windsor* and all Supreme Court 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 domestic relations of husband and wife and parent and child were matters reserved to the States.’”<sup>6</sup>**

- 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?**

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<sup>5</sup> *Id.* (internal citations omitted).

<sup>6</sup> *Id.* (internal citations omitted).

Response: Yes. If confirmed, I would uphold *Windsor* and all Supreme Court precedent.

- 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: I would consider the text of the applicable constitutional provision, statute, or regulation. If the text is clear and unambiguous, I would apply the plain meaning to the facts of the case. If not, I would look to guidance from the Supreme Court and Third Circuit in analogous cases. If there was no analogous authority, I would consider precedent from other circuits and district courts.

- 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: I would apply the applicable precedent without reservation.

- 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 constitutional. A federal court should only declare a statute unconstitutional if the statute exceeds congressional authority or violates a constitutional provision.

- 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: No. If confirmed, I would not rely on foreign law or be guided by the views of the “world community.” I would follow the precedent of the Supreme Court and Third Circuit.

- 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: During my fourteen years of service as a Magistrate Judge, I have demonstrated an unwavering commitment to following precedent and the rule of law and will continue to do so if I am confirmed as a District Judge.

- 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: My record as a Magistrate Judge demonstrates that I have consistently sought to be fair and impartial to all who have appeared before me and have never let my personal views play a role in my decision making process. I will continue to do so if I am confirmed as a District Judge.

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

Response: As a Magistrate Judge. I have had an active role in managing the court’s docket, which includes many complex civil and criminal cases. I have done this by meeting early with counsel to resolve cases by settlement, if possible; promptly deciding all discovery and dispositive motions; and imposing firm scheduling orders to move cases to trial. If confirmed as a District Judge, I will continue to use those strategies and work with the Magistrate Judges to manage my caseload.

**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: The judge plays a key role in controlling the pace and conduct of litigation. If confirmed, I would use the strategies outlined in the Answer to Question 13 above to control my docket.

**15. As a magistrate judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: Before reaching a decision, I carefully review the entire record, including all written submissions by the parties and transcripts of any hearings. I review all the relevant law, including the text of any statutory provisions, and all precedent within the Third Circuit, the Supreme Court and any relevant authority from other circuits. If there is oral argument, I am prepared to listen to the arguments made by the litigants or counsel and ask questions on any issues that are not addressed in the briefs. After carefully considering the facts and the law, I will either make an oral ruling from the bench or promptly issue a written opinion. My rulings, whether oral or written, set forth the facts, the applicable law and the reasons for my decision.

**16. 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.

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

Response: On August 6, 2014, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed and drafted all of my answers. Thereafter, I submitted my answers to the Office of Legal Policy and made minor revisions before submitting my answers to the Committee.

- 18. Do these answers reflect your true and personal views?**

Response: Yes.

**Questions for the Record**  
**Senator Lee**

**Responses of Madeline Cox Arleo**  
**Nominee, United States District Judge for the District of New Jersey**

**1. Ms. Cox, how would you describe your approach to statutory interpretation?**

Response: Having served as a Magistrate Judge for fourteen years, my approach is guided by the decisions of the Supreme Court and the Third Circuit on statutory interpretation. I consider all sources that those Courts have utilized, including an examination of the plain meaning of a statute, canons of statutory construction, controlling precedent of the Supreme Court and the Third Circuit, and persuasive authority from other circuits.

**a. To what sources would you look in deciding a case that turned on interpretation of a federal statute?**

Response: I would look first to the plain language of the statute. If the language was clear, my inquiry would end and I would apply the law to the facts of the case. If there was any ambiguity, I would consider the controlling law of the Supreme Court and of the Third Circuit. I would also consider any canons of statutory construction that those courts have approved. If there was no controlling law, I would consider persuasive authority from other courts considering the issue.

**b. Does a statute have a purpose beyond the purpose expressed in the enacted text of the legislation and if so, how would a judge be capable of adducing a statute's purpose?**

Response: If the purpose is clearly stated in the text of the legislation, the court should accept that purpose and should look no further. If there is ambiguity in the language of the statute, the court should look for interpretive guidance from the Supreme Court, binding law of the circuit, persuasive law from other circuits, and only as a last resort, consider legislative history.



**Questions for the Record**  
**Senator Ted Cruz**

**Responses of Madeline Cox Arleo**  
**Nominee, United States District Judge for the District of New Jersey**

- 1. 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: Having served as Magistrate Judge for fourteen years, I have tried to develop a judicial philosophy that emphasizes fairness and impartiality, respect for the rule of law, adherence to precedent, and respect for all who appear in court. I do not possess sufficient knowledge of the judicial philosophies of justices on the Warren, Burger or Rehnquist courts to comment as to whether their philosophies are analogous to mine.

- 2. 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 as a District Court Judge, I would look to the original public meaning consistent with the Supreme Court's holding in such cases as *District of Columbia v. Heller*, 554 U.S. 570 (2008), in interpreting the Constitution.

- 3. 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: I would not overrule binding precedent.

- 4. 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 follow all binding precedent, including *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985). Any personal views would not come into play in the judicial decision making process.

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

Response: The Supreme Court has addressed the scope of Congress' power under the Commerce Clause in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), among other cases. In these cases, the Supreme Court struck down the statute at issue because of the absence of a nexus to economic activity. If confirmed, I would adhere to this precedent and any personal views would play no role in my decision making process.

- 6. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: The Supreme Court held in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952) that the President’s power to issue executive orders and take executive action must come from the United States Constitution or from Congress. If confirmed, I will follow that precedent.

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

Response: The Supreme Court has determined that a right is “fundamental” for the purposes of substantive due process when it is “objectively, deeply rooted in this Nation’s history and tradition . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted). If confirmed, I will follow that precedent.

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

Response: In *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1995), the Supreme Court held that legislative classifications based on race, alienage, national origin and gender or laws that impinge on personal rights protected by the Constitution are subject to heightened scrutiny. If confirmed, I will follow that precedent.

**9. 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 do not have any expectations as to whether in the future, the use of racial preferences will no longer be necessary in public higher education. If confirmed, I will follow *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) and all other Supreme Court precedent.