

**Senator Grassley  
Questions for the Record**

**Loretta Biggs,  
Nominee, U.S. District Judge for the Middle District of North Carolina**

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

Response: While I believe there are a number of important attributes of a judge, during my nine years as a state district court and appellate court judge I came to believe that the most important attribute is integrity. Judicial integrity encompasses dedication to and reverence for the law and legal precedent, a commitment to provide full and fair hearings, courtesy and respect to all parties and their representatives, and a commitment to remain open-minded, fair and impartial in all aspects of decision making. I do believe that I continue to possess integrity.

**2. 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 patient but firm in the management of court proceedings; respectful to all who come before the court; and should project a calm, evenhanded, and deliberate approach to each case. Throughout my 35-year career, and specifically during my tenure as a state district court judge for a little more than seven years and appellate court judge for nearly two years, I believe I have met this standard. If confirmed, I commit to continue to do so.

**3. 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: I am fully committed to following the precedents of the United States Supreme Court and those of the Fourth Circuit Court of Appeals and will faithfully give them full force and effect whether or not I personally disagree with such precedents. I followed precedents for nine years as a state district court and appellate court judge and can assure you that I will continue to follow precedent if I am confirmed to the federal bench.

**4. 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: On a matter of first impression, if confirmed, I will first look to the plain language of the Constitution, relevant statutes or regulations to determine whether the language is clear and unambiguous on the issue before the court. If there is ambiguity, I would utilize the canons of statutory construction to help interpret the language. I would subsequently look to Supreme Court and Fourth Circuit precedents that may have addressed issues which are analogous to the question before the court and non-binding precedents from other federal circuit or district courts which might have interpreted the same or analogous issues for its persuasive authority.

- 5. 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: Even if I believe that the Supreme Court and the Fourth Circuit Court of Appeals have erred in rendering a decision, if confirmed, I will uphold the law as written by those courts as I am bound to do.

- 6. 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 and the rules of statutory interpretation require that, if a reasonable interpretation can be given so as to avoid declaring a statute to be unconstitutional, this interpretation should be utilized. Only if the presumption is overcome and it is clear that the statute exceeds congressional authority or that the Constitution has been violated should the statute be declared unconstitutional.

- 7. 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, I do not believe it is proper to look to foreign law or the views of the world community in determining the meaning of the Constitution unless required to do so in limited circumstances by Supreme Court or Fourth Circuit precedent.

- 8. 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: I faithfully pledge that, if confirmed, my decisions will be grounded in legal precedents and the text of the law and that I will not base any decision on political ideology or personal motivation. I demonstrated this commitment and reverence to precedent during my nine-year tenure on the state district court and appellate court.

- 9. 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: I faithfully pledge that, if confirmed, I will put aside my personal views and will be fair to all who appear before me. I did so for nine years as a state district court and appellate court judge and I assure you that I would do so if I am confirmed to the federal bench.

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

Response: If confirmed, I will manage my caseload to affect a speedy, just, and expeditious resolution of the case as required by the Federal Rules and the Speedy Trial Act. I will utilize case management schedules and an internal monitoring system to develop and enforce firm, but reasonable, deadlines for motions, discovery and trial. I will utilize magistrate judges, where appropriate, to facilitate certain aspects of the case.

**11. 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 that judges have the primary role in controlling the pace and conduct of litigation and, if confirmed, will utilize the management system described in Question 11 above to control my docket.

**12. As a 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: My decision making process while serving on the state district and appellate courts began with ensuring that I had a thorough understanding of the facts. As a state appellate court judge I read carefully the findings made by the trial court and all other parts of the record; as a state district court judge I listened carefully to the evidence presented and made my own findings where appropriate. After discerning the facts, I researched the applicable law. While I read and considered the briefs provided by the parties, additional research often needed to be done. Finally, I then fairly and impartially applied the law to the facts to reach my decision. If confirmed, research sources will include the Constitution, relevant statutes or regulations, and Supreme Court and Fourth Circuit precedents.

**13. If confirmed, how do you believe your experience as a judge will help you as a federal district judge?**

Response: My past experience as a judge will ease the transition if confirmed in that I have performed many of the tasks that as a federal district court judge I will be called on to perform. I have conducted hearings and trials, ruled on motions, managed caseloads, decided cases, sentenced individuals, and managed clerks, courtroom staff, and other personnel.

**14. What do you anticipate will be the greatest challenge transitioning from a state court's docket to a federal district court's docket?**

Response: I anticipate that the greatest challenge in transitioning from a state court docket to a federal court docket may be the complexity and breadth of the substantive areas of law that a federal judge is called upon to master and rule upon. However, during my 35-year legal career I have repeatedly had to master new areas of the law and I am confident I will do the same if I am confirmed to the federal bench.

**15. 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 do not know the context in which the President made that statement; however, I believe that the judge must apply the law to the facts of each case, as I did during my nine tenure as a state district court and appellate court judge.

**16. 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>1</sup>**

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

Response: Yes, I do believe that statement to be a part of the holding.

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

Response: The marriages to which Justice Kennedy refers are same sex marriages that have been recognized by an individual state as legal.

**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, that is my understanding.

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<sup>1</sup> *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

**iv. Are you committed to upholding this precedent?**

Response: Yes, if confirmed, I am committed to upholding the precedent to which you refer as well as all other precedents of the United States Supreme Court as well as those of the Fourth 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.”<sup>2</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, this portion and all portions of the opinion are binding and entitled to full force and effect by the lower courts.

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

Response: Yes, if confirmed, I commit to give this portion of the Court’s opinion full force and effect, just as I am bound to give every Supreme Court precedent full force and effect.

**c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”<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, this portion and all portions of the opinion are binding and entitled to full force and effect by the lower courts.

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

Response: Yes, if confirmed, I commit to give this portion of the Court’s opinion full force and effect, just as I would be bound to give every Supreme Court precedent full force and effect.

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<sup>2</sup> *Id.* 2689-2690.

<sup>3</sup> *Id.* 2691.

**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>4</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, this portion and all portions of the opinion are binding and entitled to full force and effect by the lower courts.

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

Response: Yes, if confirmed, I commit to give this portion of the Court’s opinion full force and effect, just as I am bound to give every Supreme Court precedent full force and effect.

**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>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, this portion and all portions of the opinion are binding and entitled to full force and effect by the lower courts.

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

Response: Yes, if confirmed, I commit to give this portion of the Court’s opinion full force and effect, just as I am bound to give every Supreme Court precedent full force and effect.

**17. 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**

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<sup>4</sup> *Id.* (internal citations omitted).

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

**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.

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

Response: I received the questions via email from the Office of Legal Policy of the Department of Justice on November 20, 2014. I prepared my responses and then I briefly discussed the responses with the Office of Legal Policy. After making final minor edits I forwarded the responses to the Office of Legal Policy authorizing them to submit them to the Senate Judiciary Committee on my behalf.

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

Response: Yes.

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

**Loretta Copeland Biggs**  
**Nominee, U.S. District Judge for the Middle District of North Carolina**

- 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: I would describe my judicial philosophy as one of ensuring that all parties be given the opportunity to have a full and fair hearing of their claims. This requires a fair, impartial and knowledgeable judge, adherence to legal precedent, and court management which allows for a speedy resolution and allows the attorneys to try their case consistent with the rules of the court. I do not have sufficient knowledge of the judicial philosophies of the Justices of the Warren, Burger, or Rehnquist Courts to draw the analogy requested.

- 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, I will adhere to Supreme Court and Fourth Circuit Court of Appeals precedent, and will use the methodologies utilized therein to interpret the Constitution. An example pertinent to this question is the case of *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Supreme Court interpreted the Second Amendment based on its ordinary public meaning of words as they were understood at the time of ratification. I will adhere to this precedent and all other Supreme Court and Fourth Circuit precedents.

- 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: If confirmed, I will follow the precedents of the Supreme Court and the Fourth Circuit and would not overrule such precedents.

- 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 will be bound by the Supreme Court's ruling in *Garcia* as well as more current rulings placing limitations on Congressional power, regardless of any personal opinions I may have.



**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 rendered a number of decisions defining the breadth of the Commerce Clause, particularly its scope and limitations as it pertains to non-economic activity. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); and *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed, I will abide by these precedents and all precedents of the Supreme Court and the Fourth Circuit.

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

Response: The President's authority to act must stem from either the Constitution or an act of Congress. *Medellin v. Texas*, 552 U.S. 491, 524 (2008). If confirmed, I will follow Supreme Court and Fourth Circuit precedents.

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

Response: The Supreme Court has stated that a right is "fundamental" for due process analysis 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 sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted). If confirmed, I will follow the precedents of the Supreme Court and the Fourth Circuit.

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

Response: The Supreme Court has held that classifications based on race, alienage, national origin, gender, and illegitimacy, as well as classifications which burden a fundamental right, are subject to heightened scrutiny under the Equal Protection Clause. *See City of Cleburne, Tex. v. Cleburne Living, Ctr.*, 473 U.S. 432, 440 (1985). If confirmed, I will follow the precedents of the Supreme Court and the Fourth Circuit.

**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: If confirmed, I will follow the precedent set by the Supreme Court in *Grutter* and *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), as well as other Supreme Court and Fourth Circuit cases addressing the constitutionality of admissions policies based on particular classifications.