

**Senator Grassley
Questions for the Record**

**Geoffrey W. Crawford,
Nominee, U.S. District Judge for the District of Vermont**

- 1. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?**

Response: Two bad qualities come to mind. The first is impatience. Some judges forget the importance of a case to the participants or the effort the attorneys and their clients have made to present it. A rushed hearing or a hasty ruling provides little assurance to the public that their legal system is working fairly.

The other quality is arrogance. Some judges, fortunately only a few, forget that their appointment is an occasion for humility and service. Arrogance can blind a judge to his or her mistakes and, like impatience, causes people to distrust the court system.

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

Response: The most important attribute is the ability to work hard – to take great pains with the facts and the law – in order to reach the right result. There is really no substitute. If a judge is willing to work hard, the other positive qualities – clear writing, a positive demeanor, control of the docket, and leadership within the courthouse – tend to fall into place. I believe I have developed this ability over the course of my career as a judge.

- 3. 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 the most important aspect of judicial temperament is an ability to run a courtroom calmly, predictably, fairly and with authority. The judge should also have an ability to direct the administration of his or her court. I seek to meet this standard every day at work in our state court system, and I believe I am generally successful.

- 4. 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 assure you that if confirmed, I am fully committed to following the precedents of the U.S. Supreme Court and the U.S. Court of Appeals for the Second Circuit. Respect for precedent and legal authority is a great safeguard against an excessive belief in one's own wisdom and judgment. It provides relative predictability for people who tailor their

conduct to our decisions. It is a necessary and fundamental limitation on individual judicial decision-making within a democratic system of government.

5. 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, the statement limits the import and effect of the *Windsor* decision to states which have exercised their own authority to allow same-sex marriage.

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

Response: I understand Justice Kennedy to be referring to marriages 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: That is my understanding of this decision.

iv. Are you committed to upholding this precedent?

Response: Yes, I am committed to following this decision and all other decisions of the U.S. Supreme Court to the letter.

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

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

² *Id.* 2689-2690.

- 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.

- 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.

- 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.

- 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.

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

Response: Yes.

- 6. 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 a case of first impression, I begin by examining the text of the statutes, regulations, and court rules at issue in the case. I turn next to analogous judicial decisions addressing similar issues. I start by reviewing decisions on such issues within our own state. I also look at the ways similar questions have been resolved by courts in other states. For common law questions, particularly tort and contract, I often review the American Law Institute Restatements.

In addressing novel questions, I seek to develop an answer that goes no further than what is required by the particular case. The most important principle for me is that my answer should be consistent with the surrounding body of law. It should be unsurprising and grow out of prior related decisions in a natural, predictable way.

- 7. 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 follow the authoritative decision despite my reservations. It would be the responsibility of the higher court to change the rule; it would not be my role to do so.

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

Response: The primary occasions when it is appropriate for a federal court to declare a federal statute to be unconstitutional are when the statute violates a constitutional provision or when it exceeds the enumerated powers delegated to Congress. A decision declaring a statute to be unconstitutional should be the last resort after less grave ways to resolve the case through statutory construction or more narrow grounds for decision have proved to be unavailable.

- 9. 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.

- 10. 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 best evidence is my service as a state court trial judge and appellate judge since 2002. During this time my decision-making has never been politically or ideologically motivated. I believe that my written decisions demonstrate my commitment to the rule of law and my respect for precedent.

- 11. 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 would offer my reputation as a trial judge and an appellate judge in the state court system. I listen carefully to both sides before making a decision. Through making a determined effort to understand the position of both sides, I have learned to leave my personal views out of the case and to decide cases on the merits of the facts and the applicable law.

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

Response: I believe in remaining in contact with the case through meeting regularly with counsel to assess progress. I try to make every motion hearing an opportunity to discuss what lies ahead in addition to resolving the particular issue. I will accept any reasonable pre-trial schedule and prefer that the lawyers reach agreement on these time frames. Once a schedule is ordered, however, I expect to follow and enforce it unless there is a good reason for an extension.

- 13. 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 has the principal responsibility for controlling the pace of litigation. Once he or she establishes a direction, the attorneys will follow. The most important step is to establish an expectation that cases will get tried routinely and on time. Once court time is committed, nothing short of a serious medical emergency should result in a delay. Parties who know that the judge intends to try the case promptly will either prepare for trial or settle.

The second thing a judge can do to control litigation is to respond quickly to motions, especially the dispositive motions to dismiss and for summary judgment which narrow and shape the issues for trial. A judge who develops a culture of responsive, timely rulings within his or her courthouse will have far less trouble with delay and back-log.

The judge must also develop an expectation that pre-trial deadlines and time commitments will be honored. There is no room in our system for petty tyrants, but a serious professional commitment to enforcing reasonable time limits causes everyone to lift their game.

I have had good success managing extremely crowded state court dockets, both civil and criminal, with these principles in mind. I am confident that this experience would serve me well in the federal system if confirmed.

14. 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: After reading the briefs and the file, I always start by writing the factual portion of the decision. Once the facts are written, I find that I have usually come to some conclusions about the applicable law. I write that portion quickly, leaving gaps for research and authority. Then I test my initial legal conclusions by reading each case which supports the analysis. Doing the legal research often leads to changes or development of the analysis. This process continues until I am satisfied that I have stated the facts of the case accurately and that I have addressed the legal issues thoroughly and correctly.

I look for support in my decision writing from the factual record, either the pleadings and affidavits for motion practice or the testimony and exhibits after a court trial. For the legal analysis, I depend upon the applicable statutes and case law and the decisions of other state and federal courts for guidance when there is no direct authority in our state.

15. 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.

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

Response: I received the written questions on June 6, 2014, following my appearance before the Senate Judiciary Committee. I answered the questions to the best of my ability on June 8 and 9, 2014, and, after discussing them with a Justice Department attorney, authorized their submission to the Committee.

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

Response: They do reflect my true and personal views.