

**Senator Grassley
Questions for the Record**

**Stephanie Gallagher
Nominee, U.S. District Judge for the District of Maryland**

- 1. As an attorney, you have written about issues facing criminal defendants. In one blog piece, you wrote that a criminal defendant should listen to their attorney when deciding whether to cooperate with law enforcement officials because the attorney will know how likely a judge will be to lower a sentence for cooperation. If confirmed, you'll handle sentencing matters. How do you think defense attorneys will describe you and your sentencing philosophy?**

Response: In my five years as a magistrate judge, I have applied the Bail Reform Act at contested detention hearings to determine whether defendants should be released or detained prior to trial. I believe that both defense attorneys and prosecutors would attest that I fairly and impartially apply the law to the individual facts of each case. If I am confirmed as a district judge, at sentencing proceedings, I would apply 18 U.S.C. § 3553 as it has been interpreted by the Supreme Court and the Fourth Circuit Court of Appeals. I am confident that, if I am confirmed, defense attorneys will describe me as a fair and impartial sentencing judge.

- 2. 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 in my view encompasses several qualities. First, integrity includes the commitment to adhere to my oath to dispense justice in an impartial manner. Second, integrity requires the ability to treat every litigant and attorney with courtesy and respect. Finally, integrity incorporates dedication to serving the public by ensuring each case a full and fair hearing within an efficient and prompt judicial process. In my view, and I believe in the view of those I professionally interact with, I possess these qualities.

- 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: Appropriate judicial temperament includes impartiality, humility, and respect for all of the participants in the process. I believe that I have demonstrated those qualities throughout my tenure as a magistrate judge, and will continue to do so if I am confirmed as a district judge.

- 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: In all of the cases I have handled as a magistrate judge, I have, to the best of my ability, applied the precedents established by the Supreme Court and the Fourth Circuit Court of Appeals. If confirmed as a district judge, I will continue to follow those precedents faithfully and give them full force and effect, without regard to my personal opinion as to what the law should be.

- 5. 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 there is no controlling precedent, I look to the relevant statute, regulation, or contract to determine whether its plain language resolves the parties' dispute. If it does not, I seek instruction from interpretation of analogous statutes or provisions by the Supreme Court or the Fourth Circuit Court of Appeals. I also review decisions from other circuit courts or district courts, although those cases do not constitute binding precedent. I might also review legislative history for guidance where appropriate. I will continue to follow that approach if confirmed as a district judge.

- 6. 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 apply the law established by the Supreme Court and the Fourth Circuit Court of Appeals, regardless of my personal view of the merits of their decisions. I will continue to adhere to those binding precedents if I am confirmed.

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

Response: The doctrine of constitutional avoidance requires courts to presume a statute constitutional, and to avoid ruling on a constitutional issue if the case can be decided on other grounds. Where a constitutional question must be reached, a federal court is duty-bound to declare a statute unconstitutional if Congress has exceeded its authority in passing the law or if the law violates citizens' constitutional rights.

- 8. 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. Judges in the United States should apply the Constitution, the laws of the United States, and binding precedent to decide the cases presented.

- 9. 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: My decisions during my tenure as a magistrate judge have applied the law and precedent without regard to political ideology or other personal motivation. I will continue to make decisions in the same way if I am confirmed as a district judge.

- 10. 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: While serving for five years as a magistrate judge, I have made decisions based on a fair and impartial application of the law to the facts presented, without regard to any personal views. I will continue to make decisions in the same way if I am confirmed as a district judge.

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

Response: As a magistrate judge, I have a docket of cases assigned to me through disposition, by consent of the parties. In administering that docket, I have adopted case management strategies from the excellent district judges in Maryland and have developed practices to further the efficient administration of my cases. With the help of my extraordinary judicial assistant, I have created a system for tracking my civil docket and the additional two hundred Social Security appeals I manage for the district. If I am confirmed as a district judge, I am confident that the case management strategies I have already set in place will allow me to keep my docket current, even with an increase in the number and variety of cases.

- 12. 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: Judges absolutely have a role in controlling the pace and conduct of litigation. Like many other judges in the District of Maryland, I use an early status conference with all counsel to identify potential issues and to discuss a proposed schedule for the case to proceed. Once a schedule is set, I adhere strictly to the scheduling order absent good cause to grant an extension. Also, like many of my colleagues, I invite parties to present discovery issues by way of telephone hearing or informal letter motion, to reduce the expense of formal discovery disputes. These practices assist in the efficient administration of justice.

- 13. 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: I first review the motions that have been filed by the parties, along with the relevant record and exhibits. I then determine whether there is binding precedent

established by the Supreme Court or the Fourth Circuit Court of Appeals. If controlling precedent exists, then I apply that law to the facts of the case. Where there is no controlling precedent, I look to the relevant statute, regulation, or contract to determine whether its plain language resolves the parties' dispute. If it does not, I seek instruction from interpretation of analogous statutes or provisions by the Supreme Court or the Fourth Circuit. I also review decisions from other circuit courts or district courts, which could provide persuasive, but non-binding, guidance. If none of those steps succeed, I might also review legislative history for guidance where appropriate. I will continue to follow that approach if confirmed as a district judge.

- 14. 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.” While you may not be familiar with the context of this statement, do you agree with the statement?**

Response: I am not familiar with the context of President Obama’s statement. I decide all cases, whether easy or difficult, by ascertaining the relevant law and applying that law to the facts presented. My personal opinions, values, and perspectives are not relevant to the determination in any case.

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

Response: I received these questions from the Office of Legal Policy at the Department of Justice (“OLP”) on April 28, 2016. I personally prepared answers, and submitted them to OLP. After discussing my answers with OLP staff, I finalized my answers and authorized OLP to submit them on my behalf.

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

Response: Yes.

**Senator Cruz
Questions for the Record**

**Stephanie Gallagher
Nominee, U.S. District Judge for the District of Maryland**

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: I do not espouse any particular judicial philosophy. I believe judges should fairly and impartially apply the law to the facts presented in each case, and should comport themselves in a manner that is respectful and courteous to all attorneys and parties.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

Response: District judges should apply Supreme Court precedent, and precedent established by the appropriate Circuit Court of Appeals, to issues involving interpretation of constitutional provisions. A judge's values and personal views are not relevant in constitutional interpretation.

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

Response: I apply all precedent established by the Supreme Court, and would continue to do so if confirmed as a district judge. I do not believe it would be appropriate for a sitting magistrate judge to express personal agreement with or disagreement with binding precedent, since a judge's personal views are not relevant to the application of existing law to the facts presented in a case.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: I respect the dedication to public service, legal abilities, work ethic, and professionalism of each of the sitting Supreme Court Justices, and do not emulate any one in particular.

5. 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, other)?

Response: The Supreme Court has used originalism in interpreting the Constitution. *See,*

e.g., District of Columbia v. Heller, 554 U.S. 570 (2008). I interpret the Constitution in accordance with all precedent established by the Supreme Court and Fourth Circuit Court of Appeals, and would continue to do so if confirmed as a district judge.

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

Response: None.

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

Response: In considering cases involving the administration of institutions such as prisons, hospitals, and schools, I would apply the Constitution, relevant statutes, and all precedent established by the Supreme Court and Fourth Circuit Court of Appeals.

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

Response: I do not have any views on the theory of a living Constitution. My role as a judge is to decide cases by applying the legal precedent established by the Supreme Court and the Fourth Circuit Court of Appeals, without regard to my personal views, opinions, or beliefs. I would continue to follow the same practice if I were to be confirmed.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: I do not have a favorite Supreme Court decision. I follow all Supreme Court precedent and would continue to do so if I were to be confirmed.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: I apply all precedent established by the Supreme Court, and would continue to do so if confirmed as a district judge. I do not believe it would be appropriate for a sitting magistrate judge to express personal agreement with or disagreement with binding precedent, since a judge's personal views are not relevant to the application of existing law to the facts presented in a case.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: I do not use the term "natural law." I interpret the Constitution and statutes in accordance with precedent established by the Supreme Court and the Fourth Circuit

Court of Appeals, and, where there is no binding precedent, by using traditional principles of statutory interpretation. I will continue to do so if I am confirmed as a district judge.

Congressional Power

12. 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: I apply all precedent established by the Supreme Court, and would continue to do so if confirmed as a district judge. I do not believe it would be appropriate for a sitting magistrate judge to express personal agreement with or disagreement with binding precedent, since a judge’s personal views are not relevant to the application of existing law to the facts presented in a case.

13. 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’s Commerce Clause power in decisions including *Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Morrison*, 529 U.S. 598 (2000); and *United States v. Lopez*, 514 U.S. 549 (1995). I apply all precedent established by the Supreme Court, and would continue to do so if confirmed as a district judge.

14. What limits, if any, does the Constitution place on Congress’s ability to condition the receipt and use by states of federal funds?

Response: The Supreme Court has addressed constitutional limits on Congress’s ability to condition the receipt and use by states of federal funds in decisions including *South Dakota v. Dole*, 483 U.S. 203, 207-08 (1987). I apply all precedent established by the Supreme Court, and would continue to do so if confirmed as a district judge.

15. Is Chief Justice Roberts’ decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: To date, the Fourth Circuit Court of Appeals has not decided this issue. *See, e.g., Liberty University, Inc. v. Lew*, 733 F.3d 72, 92 (4th Cir. 2013) (“Although ‘[t]here has been considerable debate about whether the statements [in *NFIB*] about the Commerce Clause are dicta or binding precedent,’ these five justices agreed that the Commerce Clause does not grant Congress the authority to ‘compel’ or ‘mandate’ an individual to enter commerce by purchasing a good or service.”). Ultimately, the Fourth Circuit expressed “no opinion as to whether the limitation on the commerce power announced by the five justices in *NFIB* constitute[d] a holding of the Court.” *Id.* at 94

n.7.

Presidential Power

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

Response: The Supreme Court has addressed the judicially enforceable limits on Presidential power in cases including *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) and *Medellin v. Texas*, 552 U.S. 491 (2008). If confirmed, I will continue to apply all binding precedent established by the Supreme Court and the Fourth Circuit Court of Appeals.

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: As stated above, the Supreme Court has addressed the judicially enforceable limits on Presidential power in cases including *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) and *Medellin v. Texas*, 552 U.S. 491 (2008). If confirmed, I will continue to apply all binding precedent established by the Supreme Court and the Fourth Circuit Court of Appeals.

Individual Rights

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and internal quotation marks omitted), the Supreme Court held that a right is fundamental if it is “deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty.” If confirmed, I will continue to apply all binding precedent established by the Supreme Court and the Fourth Circuit Court of Appeals.

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

Response: The Supreme Court has determined that a classification based on race, gender, national origin, or alienage is subject to heightened scrutiny under the Equal Protection Clause. See, e.g., *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

20. 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 apply all binding precedent regardless of my personal opinions or expectations, and would continue to do so if I am confirmed.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: According to Supreme Court precedent, public policies that apportion benefits or assistance on the basis of race are subject to strict scrutiny analysis. *See, e.g., Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013).

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual's right to keep and bear arms for self-defense in the home. The Supreme Court has not yet addressed whether the Second Amendment guarantees an individual right to keep and bear arms for self-defense in public.

Senator Flake
Questions for the Record

Stephanie Gallagher
Nominee, U.S. District Judge for the District of Maryland

1. **What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?**

Response: I first ascertain whether there is binding precedent interpreting the statute. If not, I consider the plain text of the statute. If the text is ambiguous, I look to the interpretation of analogous statutes by the Supreme Court and the Fourth Circuit Court of Appeals. I also consider decisions issued by other courts, which are non-binding but sometimes persuasive. If none of those approaches proves useful, I might look to legislative history to see whether it provides any indicia of clear legislative intent, but often legislative history fails to show consensus and is therefore not helpful.

2. **What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: The 10th Amendment provides that, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” The Supreme Court has interpreted the proper scope of the 10th Amendment in cases including *Printz v. United States*, 521 U.S. 898 (1997) and *New York v. United States*, 505 U.S. 144 (1992), among others. If I were to be confirmed, I would follow these cases and all other binding precedent.

3. **Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?**

Response: Standing “serves to identify those disputes which are appropriately resolved through the judicial process” as “cases and controversies” under Article III of the Constitution. *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). In my current capacity as a magistrate judge, I apply standing doctrine as established by the Supreme Court and the Fourth Circuit Court of Appeals, and I would continue to do so if I am confirmed. I have no opinion as to whether current standing doctrine fosters or impedes the ability of litigants to obtain relief, but if I did, my personal views would not be relevant in my application of the law to the facts of a case.

**Senator Klobuchar
Questions for the Record**

**Stephanie Gallagher
Nominee, U.S. District Judge for the District of Maryland**

- 1. You have devoted a significant amount of time to civic and pro bono work, including serving as co-chair of a program that enables public high school students to observe presentations from judges and attorneys and participate in mock jury trials at the Baltimore courthouse. Why has this been such a priority for you?**

Response: I feel a strong obligation to give back to my community, in both my personal and professional capacities. Volunteer work is a priority because it allows me to make a meaningful contribution to the lives of others, and to set a positive example for my children. In particular, the Open Doors program allows students from public high schools in Baltimore City to experience what it is like to serve on a jury, to watch experienced attorneys conduct a mock trial, and to learn about different jobs within the federal courts. In recent years, the program has expanded so that the students can hear from judges, attorneys, law clerks, federal law enforcement agents, and other court employees such as courtroom deputies. A few students have returned to the courthouse on subsequent dates to learn more about what we do, and I am hopeful that we are introducing the students not only to new experiences, but also to possible future careers.

Senator Tillis
Questions for the Record

Stephanie A. Gallagher
Nominee, U.S. District Judge for the District of Maryland

- 1. Some individuals have argued that the United States Constitution is a “living document,” subject to different interpretations as society changes. Do you subscribe to this point of view?**

Response: I decide all cases, including those involving constitutional interpretation, by applying the legal precedent established by the Supreme Court and the Fourth Circuit Court of Appeals, without regard to my personal views, opinions, or beliefs. I would continue to follow the same practice if I were to be confirmed.

- 2. What role, if any, should societal pressure or popular opinion play in interpreting statutes or the United States Constitution?**

Response: None.

- 3. Please define judicial activism. Is judicial activism ever appropriate?**

Response: I define judicial activism as the incorporation of a judge’s personal views, values, or beliefs into the consideration of a case. It is not ever appropriate.

- 4. When, if ever, is it appropriate for a federal court to rule that a statute is unconstitutional?**

Response: The doctrine of constitutional avoidance requires courts to presume a statute constitutional, and to avoid ruling on a constitutional issue if the case can be decided on other grounds. Where a constitutional question must be reached, a federal court must declare a statute unconstitutional if Congress has exceeded its authority in passing the law or if the law violates citizens’ constitutional rights.

- 5. What is a fundamental right? From where are these rights derived?**

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and internal quotation marks omitted), the Supreme Court held that a right is fundamental only if it is “deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty.”

- 6. Do you believe the First Amendment or any other provision of the United States Constitution protects private citizens and businesses from being required to perform services that violate their sincerely held religious beliefs?**

Response: The Supreme Court has addressed issues relating to the constitutional and statutory protections afforded the sincerely held religious beliefs of private citizens and businesses in cases including *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), and *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). If confirmed, I would follow these cases and all other binding precedent.

7. What level of scrutiny is constitutionally required when a statute or regulation related to firearms is challenged under the Second Amendment of the United States Constitution?

Response: Supreme Court precedent does not identify the specific standard of scrutiny appropriate to a Second Amendment challenge to a statute or regulation related to firearms. In *Kolbe v. Hogan*, 813 F.3d 160, 168 (4th Cir. 2016), *reh'g en banc granted*, No. 14-1945, 2016 WL 851670 (4th Cir. Mar. 4, 2016), a three-judge panel from the Fourth Circuit Court of Appeals recently applied strict scrutiny to a law banning the possession of assault weapons and larger-capacity detachable magazines. The Fourth Circuit Court of Appeals has agreed to rehear the case *en banc*, and the rehearing remains pending. If confirmed, I will continue to follow all relevant precedent from the Supreme Court and the Fourth Circuit Court of Appeals.

8. Do you believe it is constitutional for states to require voters to show photo identification before being eligible to cast their vote?

Response: In *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the Supreme Court upheld the constitutionality of an Indiana statute requiring voters to present government issued photo identification.

9. One challenge you will face as a federal judge is managing a demanding caseload. If confirmed, how will you balance competing priorities of judicial efficiency and due process to all litigants involved in the cases on your docket? Will you give certain cases priority over others? If so, please describe the process you will use to make these decisions.

Response: In my current capacity as a magistrate judge, I manage a demanding caseload including cases assigned to me for disposition by consent of the parties, and approximately two hundred Social Security appeals. My chambers uses a tracking system to ensure that we are addressing each ripe motion in a timely fashion. Although my caseload will increase if I am confirmed, I am confident that the case management strategies I have already set in place will allow me to keep my docket current. I will not give cases priority over other cases, except as required by the Speedy Trial Act applicable to criminal cases, and where an urgent or emergency motion is presented, such as a motion for a temporary restraining order. Otherwise, in most circumstances, I address

motions in the order they become ripe for disposition, and I will continue to follow that practice if confirmed.

10. Do you believe the death penalty is constitutional? Would you have a problem imposing the death penalty?

Response: The United States Supreme Court has held repeatedly that the death penalty is constitutional. *See, e.g., Glossip v. Gross*, 135 S. Ct. 2726, 2733 (2015); *Baze v. Rees*, 553 U.S. 35, 47 (2008); *Gregg v. Georgia*, 428 U.S. 153 (1976). If I am fortunate enough to be confirmed, I would continue to be bound by Supreme Court precedent, and my personal views would not prevent me from applying any precedent or law.