

**Senator Grassley
Questions for the Record**

**Amit Mehta
Nominee, U.S. District Judge for the District of Columbia**

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

Response: The most important attribute of a judge is to faithfully and impartially apply the law to the facts of the case before him or her, irrespective of the judge's personal views. I believe that I possess that attribute and, if confirmed, would faithfully adhere to that standard throughout my tenure.

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 must be impartial, willing to listen, hardworking, and maintain an open mind with regard to each and every case that comes before him or her. A judge must also exhibit respect for all parties and counsel, as well as employees of the judicial branch, who are essential to the court's proper and efficient functioning. I believe that I possess these qualities and, if confirmed, would strive each day to live up to those standards.

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: A district court judge's fealty to applying binding precedent is essential to the proper functioning of the judiciary and to instilling public trust in the judiciary. If confirmed, I will faithfully follow binding Supreme Court and D.C. Circuit precedent to the cases that come before me, irrespective of whether I personally agree or disagree with the precedent.

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: In addressing a case of first impression, I would first consider the plain meaning of the constitutional provision, statute, regulation or rule at issue. If the text's meaning was unclear, I would be guided by Supreme Court and D.C. Circuit precedent in analogous cases. In the event there is no analogous precedent, I would consult cases from other circuit courts as persuasive authority and, finally, where instructed by Supreme Court or D.C. Circuit precedent, would consider legislative history and intent.

- 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: I would in all cases apply binding precedent of the Supreme Court and the D.C. Circuit, irrespective of any personal opinion I may hold concerning such precedent.

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

Response: The Supreme Court has stated that Acts of Congress are due a “strong presumption” of constitutionality, *see United States v. Watson*, 423 U.S. 411, 416 (1976); therefore, a court should declare a statute enacted by Congress unconstitutional in only limited circumstances. Such limited circumstances might include when a statute clearly violates a constitutional provision or when Congress has exceeded its authority granted under Article I of the Constitution. A district court judge should declare a statute unconstitutional only when that result is compelled by binding Supreme Court and circuit court precedent, and only when doing so is required to resolve a case or controversy presented.

- 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: Unless compelled by Supreme Court precedent, foreign law or views of the “world community” cannot be relied upon to determine the meaning of the United States Constitution.

- 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: Political ideology or motivation has no place in the decision making of a judge. If I am confirmed, I assure the Committee that I will approach each case with an open mind and base my decisions solely on applying the controlling law to the facts before me.

- 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: Throughout my career, I have provided zealous representation to companies and individuals in criminal and civil matters, without regard to my personal views. In particular, having served as a counsel to indigent criminal defendants in the District of Columbia, I am acutely aware of the importance of equal treatment under the law. If I am confirmed, I assure the Committee that I will put aside my personal views and decide

matters that come before me based solely upon the controlling law as applied to the facts and I will be fair to all who appear before me.

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

Response: It is incumbent upon federal district court judges to manage their caseloads in a manner that promotes efficiency and confidence in the judicial system. If confirmed, I would promptly hold a scheduling conference with the parties to set reasonable deadlines for the completion of discovery and other disclosure obligations, as well as for motions practice. I would hold the parties to those deadlines, unless reasonable extensions are requested and appropriate. I would strive to decide all motions and others matters pending before the court in an efficient and timely manner, especially dispositive motions.

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 believe that judges play a critical role in controlling the pace and conduct of litigation. If confirmed, I would control my docket by promptly holding a scheduling conference with the parties to set deadlines for motions, discovery, and trial. I would hold the parties to those deadlines, unless reasonable extensions are requested and appropriate. Additionally, in criminal cases, I would enforce the guarantees of the Speedy Trial Act.

12. 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: I am very cognizant that the role of a judge is fundamentally different than that of an advocate. If confirmed as a district court judge, I will become a judicial officer who has sworn to uphold and apply the law. In making decisions in cases that come before me, I will look first and foremost to the plain text of the pertinent constitutional provision, statute, regulation or rule, as well as any controlling Supreme Court and D.C. Circuit precedent. If the plain text or controlling precedent does not resolve the issue, then I would look to Supreme Court and D.C. Circuit precedent on analogous issues; persuasive authority from other circuits; and, finally, where instructed by Supreme Court or D.C. Circuit precedent, legislative history and intent. I expect that the transition from advocate to judge will present many challenges. For example, there are areas of the law with which I have not had prior experience, such as administrative law and employee benefits law, and I will have to learn them through a rigorous study of the pertinent statutes and case law.

13. 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: A federal district court judge must in all cases be guided by and apply controlling Supreme Court and circuit court precedent, regardless of the judge's personal views or perspectives.

14. 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: Marriages recognized as legal under 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: Yes.

iv. Are you committed to upholding this precedent?

Response: Yes.

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

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

² *Id.* 2689-2690.

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**

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

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

- 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.

- 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 questions on September 24, 2014. I personally drafted my responses on September 29 and 30, 2014. On October 3, 2014, I forwarded my draft responses to the Department of Justice Office of Legal Policy for review and comment. I then finalized my answers and authorized their submission on my behalf.

⁵ *Id.* (internal citations omitted).

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

Response: Yes.

Questions for the Record
Senator Ted Cruz

Amit P. Mehta
Nominee, United States District Court for the District of Columbia

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 do not identify with the judicial philosophy of any particular Supreme Court Justice, past or present. I possess the abiding belief that judges should come to each case with an open mind, set aside their personal views, and decide the matters before them based solely on the controlling law as applied to the facts. If I were to be confirmed, I would devote myself to implementing that belief in every matter that comes before me.

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: To interpret the Constitution, the Supreme Court has looked to founding-era documents and how the public at the time understood the terms contained in those documents. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I would follow that and all other binding precedent in matters that call upon me to interpret the Constitution.

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 as a district court judge, I would not possess the authority to, nor would I, overrule precedent under any circumstance.

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, and if presented with a matter that required me to consider the limitations on federal power in relation to state sovereign interests, I would follow the binding decision in *Garcia*, as well as any other relevant Supreme Court and D.C. Circuit precedent, such as *New York v. United States*, 505 U.S. 144, 157 (1992).

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 stated that a critical factor in determining the limits of Congress’ Commerce Clause power is whether the activity sought to be regulated is economic or

non-economic activity. See, e.g., *United States v. Morrison*, 529 U.S. 598, 610 (2000) (“But a fair reading of [*United States v. Lopez*, 514 U.S. 549 (1995)] shows that the noneconomic, criminal nature of the conduct at issue was central to our decision in that case.”); *Gonzales v. Raich*, 545 U.S. 1, 25 (2005) (“Unlike those at issue in *Lopez* and *Morrison*, the activities regulated by the [Controlled Substances Act] are quintessentially economic.”). If confirmed, and if presented with a matter that required me to consider the limits of Congress’ Commerce Clause power, I would follow the binding decisions in *Lopez*, *Morrison*, and *Raich*, as well as any other relevant Supreme Court and D.C. Circuit precedent.

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

Response: The President’s ability to issue executive orders must “stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). Justice Jackson’s “familiar tripartite scheme” articulated in *Youngstown* “provides the accepted framework for evaluating executive action.” *Medellin v. Texas*, 128 S. Ct. 1346, 1368 (2008). Under that framework, presidential authority is at its “maximum” when done “pursuant to an express or implied authorization of Congress.” *Youngstown*, 343 U.S. at 635 (Jackson, J., concurring). At the other end of the spectrum, presidential power is “at its lowest ebb” when the President “takes measures incompatible with the expressed or implied will of Congress.” *Id.* at 637. In between those two poles, there is a “zone of twilight” in which the President may have “concurrent authority” with Congress, or “in which distribution is uncertain.” *Id.* If confirmed, and if presented with a matter that required me to consider the limits of presidential authority, I would follow the binding decisions of *Youngstown* and *Medellin*, as well as any other relevant Supreme Court and D.C. Circuit precedent.

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

Response: The Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), stated that “we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, 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.’” (Citations omitted.) In addition to the specific freedoms protected in the Bill of Rights, the Court identified fundamental rights protected by the Due Process Clause to include, among others, the right to marry, to have children, and to marital privacy. *Id.* at 720. The Court, however, cautioned that it has “‘always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended.’” *Id.* (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992)). If confirmed, and if presented with a matter that required me to determine whether a right is “fundamental” for purposes of the substantive due process doctrine, I would follow the binding precedent of *Glucksberg* and *Collins*, as well as any other relevant Supreme Court and D.C. Circuit precedent.

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

Response: The Equal Protection Clause is “essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). Although the general rule is that “legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest,” *id.* at 440, that rule gives way “when a statute classifies by race, alienage, or national origin.” Such classifications are subject to “strict scrutiny and will be sustained only if they are suitably tailored to serve a compelling state interest.” *Id.* Additionally, heightened scrutiny is warranted for classifications based on gender or illegitimacy, and a statute that so classifies will fail “unless it is substantially related to a sufficiently important governmental interest.” *Id.* at 441. If confirmed, and if presented with a matter that required me to determine whether a classification is subjected to heightened scrutiny, I would follow the binding precedent of *City of Cleburne*, as well as any other relevant Supreme Court and D.C. Circuit precedent.

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, and presented with a matter that required me to consider the use of racial preferences in public higher education, I would follow the binding decisions in *Grutter* and *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), as well as any other relevant Supreme Court and D.C. Circuit precedent, regardless of my personal expectations.