

**Senator Grassley  
Questions for the Record**

**Robert Pitman,  
Nominee, U.S. District Judge for the Western District of Texas**

- 1. You were reversed in *Jennings v. Owens*. The Fifth Circuit held that the plaintiff did not show he had a liberty interest that was infringed in violation of his rights.**

**a. What factors did you consider in this case?**

Response: In this case, I engaged the two-step inquiry prescribed by *Coleman v. Dretke*, 395 F.3d 216 (5th Cir. 2004), relating to certain classes of convicted persons who maintain a liberty interest giving rise to a right to procedural due process before the imposition of sex offender parole conditions. The first step consisted of a determination as to whether the plaintiff had such a liberty interest. Consistent with *Coleman*, I considered whether the conditions constituted a dramatic departure from the basic conditions of release. Having so found, I then engaged in the second step of the inquiry: whether the state provided constitutionally sufficient procedures before imposing the conditions.

**b. In retrospect, do you agree with the Fifth Circuit's ruling?**

Response: As a result of the Fifth Circuit's ruling in *Jennings*, I now understand the Fifth Circuit's ruling in *Coleman* to exclude defendants who at any time in the past had been convicted of a sex offense from the category of persons who retain a liberty interest, and thus a right to due process, in the imposition of sex offender conditions. If confirmed, I will follow Fifth Circuit precedent as to this issue, as well as all others with which I am presented as a trial judge.

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

Response: I believe the most important attribute of a judge is integrity. For a judge, integrity means strictly adhering to the rule of law and rendering fair and impartial decisions. I believe that I demonstrated this attribute during my tenure as a magistrate judge, and I am committed to doing the same should I be confirmed as a district 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 that a judge should be diligent, decisive, humble and even-tempered. As a magistrate judge, I was committed to treating all who appeared in my court with respect and civility, and to giving them a full and meaningful opportunity to be heard, and I am committed to doing the same should I be 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: If confirmed as a district judge, I pledge to follow the precedents of the Supreme Court and the Fifth Circuit Court of Appeals without any regard to any personal views I might have, and I believe I did so during the eight years I served as a magistrate judge. I believe that confidence in the judicial system depends on the consistent and unbiased application of precedent.

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: In a case of first impression, I would first focus on the text of the statute, regulation or rule. If the language was clear and unambiguous, I would apply the plain meaning of the text, employing canons of construction approved by the Supreme Court and the Fifth Circuit. If the language was ambiguous, I would look to Supreme Court and Fifth Circuit opinions in which those courts interpreted similar or analogous language. In the absence of such guidance, I would look to opinions of courts of other jurisdictions addressing similar or analogous language.

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: In all cases, I would apply the precedents of the Supreme Court and Fifth Circuit Court of Appeals regardless of whether or not I agreed with those decisions.

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

Response: I would begin the analysis with the presumption that statutes enacted by Congress are constitutional. Only in cases where Congress has exceeded its authority under the Constitution or where the statute violates a provision of the Constitution should a statute be held unconstitutional; and then only when the resolution of the case requires reaching the Constitutional question.

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.

- 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 record as a magistrate judge demonstrates my commitment to follow precedent and, if confirmed as a district judge, I pledge to follow precedent strictly and without any regard to political ideology or motivation.

- 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: I believe my record as a magistrate judge demonstrates my commitment to be fair to every litigant who appears before me and to apply the law without any regard to any personal beliefs, and I pledge to do the same if confirmed as a district judge.

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

Response: As a magistrate judge, I endeavored to manage my caseload efficiently and effectively, while ensuring that the parties were given a full and fair opportunity to litigate their cases. If confirmed, I will manage my caseload in accordance with the Federal Rules of Procedure and the Local Rules of the Western District of Texas. I will set reasonable but firm deadlines, making an effort to accommodate the needs of the parties, and will make prompt rulings following careful consideration.

- 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: I believe judges have an important role in controlling the pace of litigation, ensuring that litigants have the opportunity to fully avail themselves of the process, while being mindful of the importance of case resolution to the overall system. If confirmed, I will utilize scheduling orders and status conferences to ensure that cases are progressing efficiently, taking appropriate account of the needs of the parties. I will rule on motions promptly so that no undue delays are attributable to the court.

- 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: After determining the question presented, I would make a fair and impartial evaluation of the facts. I would then apply the relevant law according to precedent. Finally, I would endeavor to communicate my decision and the reasons underlying it in a clear and concise manner.

- 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.” Do you agree with this statement?**

Response: I believe that judges should apply the law according to precedent and without regard to personal beliefs or biases.

**15. 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.

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

Response: I understand the term “lawful marriages” to refer to marriages that are made lawful by individual states.

**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.”<sup>2</sup>**

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

<sup>2</sup> *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.”<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.

- 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.

- 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**

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

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

**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.

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

Response: Yes.

- 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: I received these questions on September 16, 2014. I reviewed the questions and prepared the attached responses. My responses were then submitted to the Office of

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

Legal Policy of the Department of Justice. After discussing my responses with an official with the OLP, I finalized them and requested that they be forwarded to the Committee.

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

Response: Yes.