Senator Chuck Grassley
Questions for the Record

Jill Pryor
Nominee, United States Circuit Judge for the Eleventh Circuit

1. **You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for several of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the following talks?**

   a. **May 28, 2009, panel discussion entitled "Confessions of a Female Trial Team."**

   Response: This program concerned the jury trial in the *Kellett v. PricewaterhouseCoopers* case in which I participated. In that case, the lead trial attorney for each of the three different groups of defendants was a woman. In 2008, the other two women and I had the idea for a presentation like this because, in our collective experience, it was rare to have a woman leading the trial of a large complex case, much less three in one case. Following the 2008 program, we were asked to do it again for a wider audience of Georgia Association for Women Lawyers members. We spoke in a question and answer format to an audience of women lawyers about our experience trying this case. We told "war stories" about how we prepared for and conducted the trial and the lessons we learned from it. We compared some of the conventional wisdom or myths about how jurors perceive women lawyers with our own experience, noting in particular that there is no single style of presentation that is most effective for female lawyers in the court room.

   b. **February 5, 2008, panel discussion on jury trial in *Kellett v. PricewaterhouseCoopers*.**

   Response: This presentation was the 2008 program referenced above, conducted for a meeting of a group of more senior women attorneys. It was very similar in substance to the one discussed above.

2. **You indicated that you supervised an associate in your firm who was co-counsel in a challenge to the constitutionality of a local ordinance under which protestors were denied the opportunity to protest during the Masters Tournament. What was the general nature of this case?**

Response: After the plaintiff organizations applied for and were denied permits under an ordinance requiring permits for public demonstrations involving groups of five or more people, they sued the consolidated city/county government to enjoin enforcement of the ordinance, claiming that it violated the First Amendment right to free speech. The district court denied relief. On appeal, the Eleventh Circuit reversed, holding that the ordinance was an unconstitutional prior restraint on speech. *Burk v. Augusta-Richmond County*, 365 F.3d 1247, 1251-55 (11th Cir. 2004). The Eleventh Circuit held the ordinance was not content-neutral because it targeted only political expression, not all speech, and it was not sufficiently tailored to a compelling governmental interest to survive strict scrutiny. *Id.*

3. You indicated that you have limited experience in criminal law. If confirmed, what you anticipate being the most difficult part of the transition and how will you prepare yourself?

Response: Because I have focused primarily on civil law in my practice, I think the most difficult part of the transition, if I am confirmed, will be getting up to speed on the Federal Rules of Criminal Procedure, the Sentencing Guidelines, and the details of substantive criminal law. In my law practice, when I encounter areas of law in which I have less experience, I research the field of law thoroughly, until I am comfortable that I have mastered it. If confirmed, I will approach criminal cases in the same way, including studying the Federal Rules of Criminal Procedure, the Sentencing Guidelines, and substantive law. I will also avail myself of judicial training in criminal law, such as the programs and online resources provided by the Federal Judicial Center.

4. You have, at times, worked with the ACLU on legal matters. Please list the matters on which you worked with the ACLU.

Response: While I served on the ACLU of Georgia's Legal Committee from 1999-2005 and in that capacity attended meetings at which various legal matters were discussed, I have worked with the ACLU as counsel on only two cases: the case discussed in response to Question 2 and an amicus brief filed jointly on behalf of the ACLU of Georgia and the National Association of Criminal Defense Lawyers in the case of *Garner v. Jones*, 529 U.S. 244 (2000).

5. Please describe any and all work that you have done with the Civil Justice PAC.

Response: I have not done any work with the Civil Justice PAC. This PAC is run by the Georgia Trial Lawyers Association (GTLA). While I served on the Editorial Committee of the GTLA's magazine from 1996-2000, I have not done any work with its PAC.

6. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.

Response: No, I do not believe that demographic factors such as gender or ethnicity should have any influence on the outcome of a case. Each case should be decided based on the applicable law and precedent and the facts in the record.

7. 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. Having integrity means, among other things, approaching each case objectively and impartially, regardless of any personal beliefs or opinions the judge might hold; having a sense of fairness and the desire to administer equal justice under the law, independent of popular opinion or public or other pressure; and maintaining a strong work ethic grounded in the recognition that the judge is a guardian of the Constitution and the American judicial system. I believe that I have demonstrated integrity throughout my career as a lawyer, whether I was dealing with clients, my colleagues at the law firm, judges and court staff, or opposing parties and counsel.

8. 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 open-minded, impartial, patient, courteous, and respectful toward every party who comes before the court. It is critical to the mission of the federal courts that every litigant perceives that he or she has been heard with an open and unbiased mind and that justice has been administered fairly and objectively. Also important is that a judge be open-minded, courteous, and respectful when dealing with colleagues on the court and court staff. At the same time, the judge must be sufficiently independent-minded that the judge will faithfully apply the established law to the facts in the record and not be swayed by popular opinion or fear of criticism.

9. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes, I am fully committed to following faithfully the binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals and, if confirmed, will give this precedent full force and effect. Personal views have no place in judicial decision-making, which must be fair and impartial and based exclusively on the objective application of the law to the facts in the record.

10. 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 I were confirmed and faced with a case of first impression (where there was no controlling, dispositive precedent), I would look for guidance in sources that have been approved by the Supreme Court and Eleventh Circuit. For example, if the case concerned the construction of a statute, I would look first at the text and, if ambiguity remained, then apply the canons of construction. I would review any analogous decisions from the Supreme Court and Eleventh Circuit, as well as persuasive authority from other circuits. I would consider the briefing and argument of the parties, confer with my colleagues on the Court, and decide the case based on the facts in the record and the applicable law as described above.

11. 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: If I am confirmed, any personal belief I might hold that the Supreme Court or Eleventh Circuit Court of Appeals had erred in rendering a decision would have no effect on my duty to apply that binding precedent.

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

Response: It is appropriate to declare a statute enacted by Congress unconstitutional only if (1) the constitutional question cannot be avoided in deciding the case and (2) the statute cannot be interpreted in such a way that it is consistent with the Constitution.

13. Please describe your understanding of the workload of the Eleventh Circuit. If confirmed, how do you intend to manage your caseload?

Response: I understand that in terms of judicial workload, the Eleventh Circuit is the busiest federal circuit court in the nation. This extremely heavy workload is potentially a threat to the thorough and timely administration of justice. If confirmed, first, I will work very hard, as I have done for nearly 25 years in my private law practice. Second, I will strive for the greatest possible efficiency in my chambers' practices and procedures. I will

seek the advice of experienced colleagues and court staff regarding best practices for efficient and effective management of my chambers and docket.

14. 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: A circuit judge should not rely on foreign law or the views of the world community unless required by Supreme Court precedent to do so.

15. 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 doctrine of *stare decisis* plays an important role in our nation's judicial system, ensuring stability and predictability in the law and promoting respect for the authority of the federal courts. Political ideology or motivation should never affect the outcome of a case. If confirmed, I will faithfully apply precedent and the text of the law in my judicial decision-making.

16. 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 that integrity, including the ability to set aside any personal views and be fair and impartial to all who appear before the court, is the most important attribute for a judge. As the Commentary to Canon 1 of the Code of Conduct for United States Judges states, "Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges." If confirmed, I will consider it my solemn duty to administer justice fairly, equally, and with an open mind. Throughout my career, I have endeavored to maintain objectivity and utmost integrity in my law practice and to treat all participants in the legal process, including litigants and opposing counsel, with respect and professionalism.

17. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: A panel of the Eleventh Circuit has no power to overturn another Eleventh Circuit panel's precedent. A panel decision may only be overturned by the full court sitting *en banc* or, of course, by the Supreme Court. Under Federal Rule of Appellate

Procedure 35, *en banc* consideration may be granted only in extremely limited circumstances, where necessary to secure or maintain uniformity of the court's decisions or where the proceeding involves a question of exceptional importance. Even in these circumstances, overruling precedent is disfavored and should not be undertaken without careful consideration.

18. 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: In my law practice, before I can be effective as an advocate and advise my clients appropriately, I must understand the law and facts objectively and be able to look at them from the perspective of the judge or jury who will be deciding the case. While this role is ultimately different from that of a judge, I have some experience looking at cases from a judge's perspective from my service as law clerk for the Honorable J.L. Edmondson on the Eleventh Circuit. I also believe that my decades of experience as an appellate practitioner will assist me in making the transition to appellate judge. If confirmed, I will use similar skills to analyze the facts and the law in each case that comes before me, considering the briefs and argument of counsel, my own legal research, and the insights of my colleagues on the panel.

I anticipate that the most difficult part of the transition for me will be moving from a law firm to a judicial office where the internal practices and procedures are very different. And, given the Eleventh Circuit's very large workload, if I am confirmed, it will be imperative for me to hit the ground running. In making the transition, I will apply my decades of experience in managing my caseload, office, and staff. I will also look to my colleagues on the Court and experienced court staff for guidance in mastering court practices and procedures, as well as my docket.

19. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work and interaction with colleagues on the Court?

Response: I believe that collegiality plays an extremely important role in the work of a circuit court, which does not issue opinions by individual judges but only by panels. I know from my tenure as a law clerk on the Eleventh Circuit and my association with the Court over the years that the Eleventh Circuit has a very strong tradition of collegiality. I would endeavor to preserve and continue this tradition should I have the honor of joining the Court as a judge.

20. At a speech in 2005, Justice Scalia said, "I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says."

a. Do you agree with Justice Scalia?

Response: I am unfamiliar with this speech; however, I agree with Justice Scalia that the role of a judge is to interpret the Constitution as written, regardless of any personal views the judge might have about what Constitution should provide.

b. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?

Response: No. A judge should faithfully apply precedent and, if no binding precedent exists, interpret the law by relying on sources whose use for that purpose has been sanctioned by the Supreme Court and the Eleventh Circuit.

21. Do you think judges should consider the "current preferences of the society" when ruling on a constitutional challenge? What about when seeking to overrule longstanding Supreme Court or circuit precedent?

Response: No. The current preferences of the society should have no bearing on constitutional interpretation or the application of precedent.

22. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

Response: If I am confirmed and faced with a case or controversy in which it is necessary to decide how the Constitution applies to modern statutes or regulations, I will review the texts of the relevant statutes or regulations and, if they are ambiguous, apply the appropriate rules of statutory construction. I will review the text and structure of the relevant constitutional provision, as well as any applicable precedent from the Supreme Court and the Eleventh Circuit interpreting that constitutional provision and, if further interpretation is needed, look to historical sources that other precedents have already cited approvingly to determine its meaning. If it is possible to avoid declaring the statute or regulation unconstitutional, either because it can be interpreted in a manner that does not conflict with the Constitution or because the constitutional question can be avoided, I will avoid invalidating the statute or regulation.

23. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

Response: I do not believe that a judge's opinions of the evolving societal norms and traditions have any role in interpreting the Constitution. In the limited context of the Supreme Court's Eighth Amendment jurisprudence, the Court has looked to the "evolving standards of decency" to determine what constitutes cruel and unusual punishment. *Trop v. Dulles*, 356 U.S. 86, 101 (1958). If confirmed, I will follow all Supreme Court and Eleventh Circuit precedent.

24. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?

Response: In *Cutter v. Wilkinson*, 544 U.S. 709 (2005), the Supreme Court addressed the interplay between the Establishment and Free Exercise Clauses of the First Amendment, holding that the government may accommodate religious practices without violating the Establishment Clause. Acknowledging that the two clauses "are frequently in tension," the Court "reaffirmed that 'there is room for play in the joints between' the Free Exercise and Establishment Clauses, allowing the government to accommodate religion beyond free exercise requirements, without offense to the Establishment Clause." *Id.* at 719 (internal citations omitted).

25. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has held that the death penalty is constitutional as long as appropriate procedural protections are in place and it is not applied to persons who lack the mental capacity for the requisite intent/understanding of their crimes, such as the intellectually disabled or persons under age 18. If confirmed, I will apply this Supreme Court precedent to any death penalty cases that come before me.

26. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: While the Constitution must be applied to new technologies and factual situations that obviously did not exist when it was adopted, Supreme Court precedent instructs that the meaning of the Constitution does not change. If confirmed, I will follow Supreme Court precedent on constitutional interpretation.

27. Do you believe there is a right to privacy in the U.S. Constitution?

Response: The Supreme Court has recognized privacy interests inherent in fundamental rights protected by the Constitution. For example, the Supreme Court has found a privacy interest in the freedom of association under the First Amendment, *see NAACP v. Alabama*, 357 U.S. 449 (1958); considered "expectations of privacy" in Fourth Amendment cases, *Missouri v. McNeely*, ___ U.S. ___, 133 S. Ct. 1552, 1558 (2013); *see Kyllo v. United States*, 533 U.S. 27, 40 (2001); and recognized "marital privacy" as part of the liberty that the Fourteenth Amendment protects. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *see Griswold v. Connecticut*, 381 U.S. 479 (1965).

a. Where is it located?

See response to Question 27.

b. From what does it derive?

See response to Question 27.

c. What is your understanding, in general terms, of the contours of that right?

See response to Question 27.

28. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

Response: If I were confirmed, I would not interpret the Constitution based on "reading between the lines." The Supreme Court has held that certain rights are fundamental and entitled to protection even though not explicitly set forth in the Constitution. Such rights must be "careful[ly] descri[bed]" by their proponents and "deeply rooted in this nation's history and tradition . . . and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations and quotations omitted). If confirmed, I would apply Supreme Court and Eleventh Circuit precedent in any case that presented this question.

b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

Response: No. A circuit judge should interpret the Constitution by applying precedent of the Supreme Court and his or her own circuit.

29. In *Brown v. Entertainment Merchants Association*., Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

Response: Generally speaking, it would be inappropriate for a judge to base his or her opinion on research conducted outside the record on appeal. Supplementation of the record on appeal with items originally not contained in the record is permitted only in limited circumstances. *See* Fed. R. App. P. 10, 16.

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

Response: It might or might not be appropriate for appellate judges to base their opinions on psychological or sociological scientific studies – as long as those studies are contained in the record on appeal – depending upon the facts in the case and the issues on appeal. For example, scientific studies might be relevant to a challenge to the admission or exclusion of expert testimony under Federal Rule of Evidence 702.

30. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: While the Supreme Court has not precisely determined the appropriate standard of scrutiny that would apply in a Second Amendment challenge to a federal or state gun law, the Supreme Court has stated that the standard would be higher than rational basis. *See District of Columbia v. Heller*, 554 U.S. 570, 628 n.27 (2008). In *GeorgiaCarry.Org v. Georgia*, 687 F.3d 1244 (11th Cir. 2012), the Eleventh Circuit considered a facial challenge under the Second Amendment to a Georgia statute prohibiting the carrying of guns in places of worship; however, because the court found the statute to be constitutional on its face, the court did not reach the issue of the proper standard of scrutiny to be applied.

31. 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 Supreme Court precedents faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I am fully committed to following faithfully the binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals and, if confirmed, will give such precedent full force and effect. Personal views have no place in judicial decision-making, which must be fair and impartial and based exclusively on the objective application of the law to the facts in the record.

32. 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: My understanding is that Justice Kennedy is referring to the first sentence of the same paragraph, which concerns "same-sex marriages made lawful by the State."

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.

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

iv. Are you committed to upholding this precedent?

Response: Yes. If confirmed as a judge on the Eleventh Circuit, I would be bound to uphold this precedent, just as I would be bound by every other Supreme Court precedent.

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 courts? If not, please explain.

Response: Yes, this portion and all other portions of the Court's opinion are binding and entitled to be given full force and effect.

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

Response: Yes. If confirmed as a judge on the Eleventh Circuit, I would be bound to uphold this precedent in its entirety, just as I would be bound by every other Supreme Court precedent.

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, this portion and all other portions of the Court's opinion are binding and entitled to be given full force and effect.

[2] *Id.* 2689-2690.
[3] *Id.* 2691.

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

Response: Yes. If confirmed as a judge on the Eleventh Circuit, I would be bound to uphold this precedent in its entirety, just as I would be bound by every other Supreme Court precedent.

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, this portion and all other portions of the Court's opinion are binding and entitled to be given full force and effect.

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

Response: Yes. If confirmed as a judge on the Eleventh Circuit, I would be bound to uphold this precedent in its entirety, just as I would be bound by every other Supreme Court precedent.

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]

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.

[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

Response: Yes, this portion and all other portions of the Court's opinion are binding and entitled to be given full force and effect.

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

Response: Yes. If confirmed as a judge on the Eleventh Circuit, I would be bound to uphold this precedent in its entirety, just as I would be bound by every other Supreme Court precedent.

33. What would be your definition of an "activist judge"?

Response: I understand the term "activist judge" to refer to someone who ignores or departs from precedent in order to render opinions that are consistent with the judge's personal views and beliefs and/or to accomplish a political agenda.

34. 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.

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

Response: I received these questions via email from the Department of Justice's Office of Legal Policy (OLP) on May 20, 2014. I reviewed them, conducted research on the legal issues, consulted my Senate Questionnaire in connection with questions referring to items contained in it, and drafted and revised my responses. I then reviewed my responses with an attorney in the OLP and finalized them.

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

Response: Yes.

Responses of Jill A. Pryor, Nominee,
United States Circuit Judge for the Eleventh Circuit, to
Questions for the Record
Senator Ted Cruz

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 believe that an appellate judge must respect the limited role of judges and appellate judges in particular, applying the law to the facts in the record of each case with faithful adherence to precedent. An appellate judge must also apply the appropriate standard of review, affording the required degree of deference to the district courts' decisions. A circuit judge should attempt to give clear, cogent guidance to the district courts and the parties without deciding or opining upon issues that are not necessary to the resolution of the case or controversy before the court. The judge must administer justice fairly and impartially, setting aside any personal views, motivation, or feelings the judge might have, and avoid any activity that might create even the appearance of impropriety. The judge must at all times treat litigants, counsel, colleagues, and court staff with courtesy, respect, and dignity. The judge must also work very diligently to decide cases in a timely manner, recognizing that justice delayed can sometimes amount to justice denied. While I do not identify any single Justice's judicial philosophy as analogous with mine, I believe that all excellent jurists share these same values.

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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court construed the Second Amendment by looking to the original public meaning of its terms. In construing the Suspension Clause and the writ of habeas corpus in *Boumediene v. Bush*, 553 U.S. 723 (2008), the Court looked to the intent of the framers of the Constitution. If confirmed, I will faithfully follow these and all other applicable Supreme Court precedents regarding the proper methodology for interpreting the particular constitutional provision at issue.

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: An Eleventh Circuit panel's decision may be overruled only by the Eleventh Circuit sitting *en banc* or by the United States Supreme Court. Federal Rule of Appellate Procedure 35 provides that rehearing *en banc* will be ordered only where it is "necessary to secure or maintain uniformity of the court's decisions" or the case "involves a question of exceptional importance." Further, even if *en banc* review is granted, the decision to overrule precedent must always be approached with caution. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent unless and until it is overruled.

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 as a judge on the Eleventh Circuit, I will be bound by all Supreme Court precedents, including the *Garcia* case, as well as more recent precedents such as *New York v. United States*, 505 U.S. 144 (1992), and *Printz v. United States*, 521 U.S. 898 (1997), both of which held that the federal laws at issue were unconstitutional because they violated state sovereignty.

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 emphasized the non-economic nature of the regulated activity in striking down federal laws as unconstitutional under the Commerce Clause. *See United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). The Supreme Court has not, however, ruled that non-economic activity could never be regulated under the Commerce Clause. *See Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring) (concluding that the Commerce Clause power, in conjunction with the Necessary and Proper Clause, permits Congress to regulate "even non-economic local activity if that regulation is a necessary part of a more general regulation of interstate commerce."). If confirmed, I will follow all Supreme Court and Eleventh Circuit precedent.

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

Response: The Supreme Court addressed the judicially enforceable limits on the President's ability to issue executive orders in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), in which the Court held unconstitutional the President's seizure of the steel mills during the Korean War. The President's authority to act must come from an act of Congress or the Constitution. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent when considering any case involving executive orders or executive actions.

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

Response: The Supreme Court has held that certain rights are fundamental and entitled to constitutional protection where the claimed right is "deeply rooted in this nation's history and tradition . . . and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal citations and quotations omitted). The right must also be "careful[ly] descri[bed]." *Id.* (citations omitted). If confirmed as a judge on the Eleventh Circuit, I will apply Supreme Court precedent such as *Glucksberg*, as well as any applicable Eleventh Circuit precedent, when considering whether a right is "fundamental" for purposes of substantive due process.

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

Response: Supreme Court precedent holds that strict scrutiny must be applied to classifications that are "so seldom relevant to the achievement of any legitimate state interest," such as race and national origin. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Under strict scrutiny, the state action must be narrowly tailored to a compelling governmental interest. Intermediate scrutiny is applied to classifications such as gender, which "frequently bear[] no relation to ability to perform or contribute to society." *Id.* at 440-41. To survive intermediate scrutiny, the state action must serve important governmental objectives and must be substantially related to the achievement of those objectives. If confirmed, I will faithfully apply this 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: I am not in a position to know whether the majority's prediction in the *Grutter* case will prove to be accurate; however, if confirmed, I will abide by the Supreme Court's holding in that case and in *Fisher v. University of Texas at Austin*, ___ U.S. ___, 133 S. Ct. 2411 (2013), that the use of racial classifications in public university admissions is constitutional only if it can survive strict scrutiny.