

Responses of Paul G. Byron
Nominee to the United States District Court for the Middle District of Florida
To the Written Questions of Senator Grassley

- 1. You have a wide range of legal experience as a practicing attorney. How will these experiences influence you, if at all, in your job as a federal judge, if confirmed?**

Response: Over the past 28 years, I have represented the United States Army, soldiers, the United States of America, individuals and corporations as both plaintiff and defense counsel. The majority of my legal practice has been in federal court, both at the trial and appellate level, and throughout my career I have repeatedly served as lead counsel in complex criminal and civil litigation. I believe that the diversity of my experience as a practicing attorney has prepared me to serve as a District Court Judge, if confirmed, by enabling me to evaluate legal issues from all perspectives. The complexity of the cases in which I have served as lead or co-lead counsel required considerable organizational skills and attention to detail. I believe these attributes and experiences will assist me in executing the duties of a District Court Judge, if fortunate enough to be confirmed.

- 2. Given that you received a partial “Not Qualified” rating from the ABA’s Standing Committee on the Federal Judiciary, I wanted to give you an opportunity to outline your qualifications and experience. Would you please explain to the Committee why you believe you are qualified to serve as a United States District Judge?**

Response: I began my legal career as a Judge Advocate General in the United State Army during which time I served as defense counsel and subsequently as a prosecutor. During my nearly 12 years as an Assistant United States Attorney (AUSA), I successfully represented the United States in the prosecution of organized crime, money laundering, healthcare fraud, complex white collar crime and whistle blower actions under the False Claims Act. I also represented physicians and hospitals in medical negligence actions, and I represented the National Aeronautics and Space Administration in an employment discrimination action. While serving as an AUSA, I volunteered to provide training on the prevention of money laundering and terrorist financing to foreign law enforcement agencies in a number of countries. I also argued 16 appeals before the Eleventh Circuit Court of Appeals, I have tried to conclusion approximately 85 trials during the course of my career, and I received numerous awards and commendations from state and federal law enforcement, including an award presented by the Attorney General for superior performance.

In 2001, I was selected to prosecute crimes against humanity and war crimes committed in the Former Yugoslavia. Accordingly, I served in the International Criminal Tribunal for the former Yugoslavia (ICTY). Since the prosecutors and investigators serving within the ICTY come from a wide variety of cultural backgrounds, working within the ICTY required me to appreciate, listen to and cooperate with diverse points of view. The procedural and substantive law applied at the ICTY is unique, and I adjusted to this legal system by starting with a careful analysis of the statutory authority governing the ICTY

and detailed study of existing precedent. While at the ICTY, I often worked with senior political and military officials from Croatia and Bosnia and Herzegovina, requiring a level of diplomacy.

I concluded my government service with the Department of Justice International Division of Asset Forfeiture and Money Laundering Section (AFMLS). As an attorney with AFMLS, I represented the United States in a number of bilateral and multilateral treaty organizations, working closely with the United States Department of State and Department of the Treasury. My service with AFMLS once again required me to understand and appreciate diverse views held by the numerous countries, law enforcement agencies, central banks and private banks with whom we interacted.

In my 10 years as an attorney in private practice, I have represented individuals and corporations in complex civil litigation in federal and state courts. I have served as plaintiff's counsel and as defense counsel, and I have argued two significant appeals in state appellate courts and one case before the Eleventh Circuit. I am well versed in federal criminal and civil law and procedure.

I believe that the diversity of my legal experience, my ability to learn new technical subject matter, as well as new procedural and substantive law, and my success in listening to and carefully considering opposing points of view qualify me to serve as a District Court Judge, should I be confirmed.

3. Please describe some traits or judicial philosophy that you would like to emulate as a judge, if confirmed. Which characteristics would you hope to avoid?

Response: I believe a judge must respect the rule of law and be cognizant of the court's limited role in our constitutional democracy. I further believe that a judge must be patient, considerate to the parties and litigants, demonstrate thoughtfulness, diligence, intellectual honesty and a firm commitment to the principle of stare decisis. If I am confirmed, my judicial philosophy will be to decide only those cases and controversies properly before me and to base my decisions upon binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. If confirmed, I would strive to emulate these traits, and I would avoid any action which could convey even the appearance that all parties and their counsel are not receiving equal and impartial consideration from the court.

4. 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 includes the ability to faithfully and impartially apply the law, regardless of the judge's personal opinion, based upon the facts as applied to precedent. I believe I possess this attribute.

5. 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 serves his or her country, community and the parties that appear before the court. A judge must possess patience, humility and the willingness to listen to opposing positions without bias or prejudice in an effort to resolve disputed issues of fact and apply the law to the facts. A judge must also treat the parties, attorneys and public with respect, thereby promoting confidence in the administration of justice. I believe I possess these qualities.

- 6. 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: Throughout my career in both public service and private practice, I have been committed to citing controlling precedent in support of my position, and I have been equally committed to acknowledging when opposing counsel has cited controlling precedent. The doctrine of stare decisis is fundamental to our legal system. If confirmed as a District Court Judge, I will faithfully follow controlling Supreme Court and Eleventh Circuit precedent, regardless of my personal beliefs or opinions.

- 7. 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."**

- i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Response: I do believe that the statement is part of the Court's holding.

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

Response: Justice Kennedy's reference to "lawful marriages" is limited to those same-sex "marriages that are made lawful by the State." *United States v. Windsor*, 133 S. Ct. 2675, 2695 (2013).

- 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. It is my understanding that the holding applies to section 3 of the Defense of Marriage Act's prohibition against federal recognition of same-sex marriages that a state has recognized to be lawful.

iv. Are you committed to upholding this precedent?

Response: Yes. If confirmed as a District Court Judge, I will follow *Windsor* and any other relevant precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

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."

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. The majority opinions of the Supreme Court, in their entirety, are binding precedent and, as such, are entitled to full force and effect by lower court judges unless and until they are overruled by later Supreme Court decisions.

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

Response: Yes. If confirmed as a District Court Judge, I will follow *Windsor* in its entirety as I would any other precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."

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. The majority opinions of the Supreme Court, in their entirety, are binding precedent and, as such, are entitled to full force and effect by lower court judges unless and until they are overruled by later Supreme Court decisions.

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

Response: Yes. If confirmed as a District Court Judge, I will follow *Windsor* in its entirety as I would any other precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

- 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.”**

- 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. The majority opinions of the Supreme Court, in their entirety, are binding precedent and, as such, are entitled to full force and effect by lower court judges unless and until they are overruled by later Supreme Court decisions.

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

Response: Yes. If confirmed as a District Court Judge, I will follow *Windsor* in its entirety as I would any other precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

- 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.’”**

- 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. The majority opinions of the Supreme Court, in their entirety, are binding precedent and, as such, are entitled to full force and effect by lower court judges unless and until they are overruled by later Supreme Court decisions.

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

Response: Yes. If confirmed as a District Court Judge, I will follow *Windsor* in its entirety as I would any other precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

- 8. 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 the absence of controlling precedent from the Supreme Court or the Eleventh Circuit, I would begin my analysis of the issue by applying accepted principles of statutory construction. I would first look at the plain meaning of the constitutional provision, statute or regulation, and, if the language is clear and unambiguous, I would apply the plain meaning of the provision, statute or regulation to the facts. If the language is not clear and unambiguous, I would look to Supreme Court and Eleventh Circuit decisions interpreting analogous provisions and, if necessary, I would consult decisions from other circuits as persuasive authority.

- 9. 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 confirmed as a District Court Judge, I would faithfully apply Supreme Court and Eleventh Circuit precedent regardless of any personal opinions or views I may possess.

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

Response: All statutes enacted by Congress are presumed constitutional. *United States v. National Dairy Products Corp.*, 372 U.S. 29, 32 (1963). The statute may only be declared unconstitutional if it is clear that Congress has exceeded its authority to enact the statute or when the statute violates a provision of the Constitution. If it is possible to decide the issue that is before the court without addressing the constitutionality of a statute, the court must do so. *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548, 571 (1973).

- 11. 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. The Constitution is a uniquely American document, and district courts should be guided by domestic law.

- 12. 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: Throughout my career, both in public service and private practice, I have advocated positions on behalf of my clients by citing controlling precedent. Our federal judicial system is predicated upon strict adherence to the rule of law which has at its foundation the doctrine of stare decisis. I have spent my professional life supporting and enforcing the rule of law. If confirmed as a District Court Judge, I will faithfully execute my duty to ensure that the rule of law is adhered to, regardless of personal opinions or views that I may possess.

13. What assurances can 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: My experience in both criminal and civil law, as counsel for the plaintiff and for the defense, provides me with the perspective necessary to appreciate the importance of appearing before judges who treat the parties fairly and who maintain neutrality while applying the law. Individuals and businesses are entitled to rely upon consistent application of the rule of law. If confirmed as a District Court Judge, I will set aside any personal view I may have and will be fair to all parties and their counsel.

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

Response: If confirmed, I will manage my caseload by setting and maintaining reasonable and efficient schedules in all matters with deadlines clearly established in a case management order entered promptly after a case has been filed. At the initial status conference, I would have the parties identify any unique issues which may require modification to the case management order, and I would encourage the parties in complex litigation to engage in periodic status conferences. I would also promptly decide motions, including dispositive motions, and make efficient use of Magistrate Judges.

15. 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: Yes, I believe that judges play a significant role in ensuring that cases proceed in an orderly fashion towards final resolution. I would utilize the steps set forth in response to question number 14 in order to control and manage my docket. Additionally, when appropriate, in order to make efficient use of the parties' time, I would advise parties verbally or in writing prior to submission of written motions or oral argument whether a particular legal or factual issue should be emphasized in their presentation.

16. 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 understand that the role of a judge is to decide cases and controversies based upon applicable constitutional and statutory provisions and with strict adherence to controlling precedent. In deciding cases, I will consider the facts as presented by the parties, resolve disputed issues of fact, and apply the law to those facts. In applying the law, whether a constitutional provision, statute, or rule of procedure, I will turn first to the plain meaning of the controlling provision. If the provision is not clear and unambiguous, I will research controlling precedent from the Supreme Court and the Eleventh Circuit. In the absence of controlling precedent, I will consider decisions from other circuits as persuasive authority. The most difficult part of this transition will be developing the proper balance between setting and enforcing case management orders to ensure the prompt and efficient resolution of cases and identifying when modification to the scheduling order, including extension of deadlines, is reasonable and justified.

- 17. According to the website of the 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”. You have indicated that you are a member of the AAJ.**

a. Will you please explain your interest in and your work for the AAJ?

Response: I became a member of the AAJ in order to attend continuing legal education seminars. The AAJ also publishes periodic journals, similar to the American Bar Association Journal, which contain articles addressing a variety of legal issues. I have never worked on or for the AAJ.

b. 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.

c. Are you aware of any endorsements or promised endorsement 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.

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

answered.

Response: I received these questions on April 8, 2014 and prepared my responses on April 9-10, 2014. I submitted my responses to the Department of Justice Office of Legal Policy for review. I then finalized my responses and authorized their transmittal to the Committee.

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

Response: Yes.

Responses of Paul G. Byron
Nominee to the United States District Court for the Middle District of Florida
To the Written Questions of Senator Ted Cruz

- 1. 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 a judge must respect the rule of law and be cognizant of the court’s limited role in our constitutional democracy. I further believe that a judge must demonstrate thoughtfulness, diligence, intellectual honesty and a firm commitment to the principle of stare decisis. If I am confirmed, my judicial philosophy will be to decide only those cases and controversies properly before me and to base my decision upon binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. While I have read opinions from the Warren, Burger and Rehnquist Courts, I have not studied the individual justices sufficiently to enable me to characterize a particular justice’s philosophy as analogous to my own.

- 2. 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: The United States Supreme Court has employed originalism to interpret the Constitution. Therefore, if confirmed as a District Court Judge, I would follow cases from the Supreme Court which have examined the original public meaning of constitutional provisions in deciding the constitutionality of statutes, *see, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

- 3. If a decision is precedent today while you’re going through the confirmation process, under what circumstances would you overrule that precedent as a judge?**

Response: As a District Court Judge, I would be bound by the precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals. I would not and could not overrule any precedent.

- 4. 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: The United States Supreme Court in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 550 (1985) noted that, with few exceptions, the Constitution does not contain an enumeration of rights retained by the States and that “[a]part from the limitation on federal authority inherent in the delegated nature of Congress’ Article I powers, the principal means chosen by the Framers to ensure the role of the States in the federal system lies in the structure of the Federal Government itself.” However, in other

cases, the Supreme Court has also determined that state sovereign interests are protected via judicially created limitations on federal power. For example, in *Printz v. United States*, 521 U.S. 898 (1997), the Supreme Court limited federal power by declaring that certain provisions of the Brady Act were unconstitutional, because they preempted state sovereign rights. *See also New York v. United States*, 505 U.S. 144 (1992). If confirmed as a District Court Judge, I would follow all applicable precedent.

5. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), held that the federal laws under consideration were unconstitutional because they exceeded congressional power under the Commerce Clause. In both cases, the Supreme Court emphasized the noneconomic nature of the activity being subjected to federal regulation. Neither of these opinions, however, hold that the Commerce Clause may never extend to noneconomic activity. In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia's concurring opinion cited the Necessary and Proper Clause in conjunction with the Commerce Clause to opine that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." If confirmed as a District Court Judge, I would follow all applicable precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

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

Response: The United States Supreme Court held, in *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)), that the "President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" Judicially enforceable limits on the President's ability to issue executive orders or executive actions thereby include circumstances wherein the President acts without express constitutional or statutory authority, or when the executive action impermissibly interferes with the functions that the Constitution assigns to another branch of government or otherwise violates a constitutional or statutory provision. If confirmed as a District Court Judge, I would follow all applicable precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

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

Response: For purposes of substantive due process protection, fundamental rights include those liberties that the United States Supreme Court has found to be "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." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). If confirmed as a District Court Judge, I would

apply that precedent.

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

Response: The United States Supreme Court has held that certain classifications, such as race, gender, national origin, or classifications that burden a fundamental right, are subject to a higher level of scrutiny under the Equal Protection Clause. *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440-442 (1985).

9. 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: The United States Supreme Court noted in *Grutter* that “race-conscious admissions policies must be limited in time. This requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands.” *Grutter*, 539 U.S. at 342. While I have no personal opinion as to whether the use of racial preferences will no longer be necessary in public higher education 15 years from now, if confirmed as a District Court Judge, I will apply precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.