

**Responses of Darrin P. Gayles,
Nominee, United States District Judge for the Southern District of Florida
to the Written Questions of Senator Grassley**

- 1. During your confirmation hearing, you indicated that consultation of the legislative history of a statutory provision “may be a factor” in your decision making process as a judge. Please describe with specificity the circumstances under which you deem it appropriate to look to legislative history as an aid to reaching an understanding about the meaning or construction of a statute.**

Response: A court should rely solely on the language of a statute if it is clear and unambiguous. If the language is not clear and unambiguous, and there is no binding precedent, judges should look to the following sources to help interpret the statute: canons of statutory construction, binding precedent interpreting analogous statutory provisions, and persuasive (though not controlling) precedent from other courts interpreting the same provision. If these sources do not resolve the question, it may be appropriate to look to the legislative history of a statute. A court should consider a statute’s legislative history as a last resort because the legislative history may not be an accurate reflection of the legislature’s intent in enacting the statute.

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

Response: Integrity is the most important attribute of a judge. I believe that I possess that attribute, and have demonstrated it over my ten years as a Florida state 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: A judge must at all times maintain an appropriate judicial temperament as he or she sets the standard for professionalism and civility among the litigants and attorneys. A judge’s temperament is also an essential factor in how parties perceive judges and the judicial system as a whole. The most important elements of judicial temperament are patience, fairness, humility, and respect. In the ten years that I have served as a Florida state judge, I believe that my judicial temperament has met that standard.

- 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, I commit that I will always faithfully follow the precedents of the Supreme Court and the Eleventh Circuit. I will give those precedents full force and

effect, even if I personally disagree. As a Florida state judge for the last ten years, I have applied binding precedent regardless of whether I personally disagreed with the 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 deciding cases of first impression, I will continue to rely on the clear and unambiguous language of the statute at issue. If a provision of the statute is ambiguous and there is no controlling precedent, I would consider the statute as a whole and related statutes to determine its meaning. If the meaning remains unclear, I would consider the opinions and legal analyses of other judges who have interpreted similar statutes, which may be persuasive. As a last resort, I may consider the statute's legislative history.

- 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: If confirmed, I will faithfully follow Supreme Court and Eleventh Circuit precedent even if I believe that the higher courts seriously erred in rendering their decisions. As a Florida state judge, I have applied binding precedent regardless of any personal views I might have had.

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

Response: A statute enacted by Congress is presumed to be constitutional. A statute should be upheld unless it clearly violates a provision of the Constitution or Congress exceeded its authority.

- 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. If I am confirmed, I would not rely on foreign law or the views of the "world community" to determine the meaning of the Constitution.

- 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: In my ten years as a Florida state judge, my decisions have been grounded solely in precedent and the text of the law at issue. I assure the Committee that if I am confirmed, my decisions will never be affected by 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: Over ten years as a judge, I have adjudicated thousands of issues in civil and criminal cases. I have always put aside my personal views and have been fair to all who have appeared before me. I assure the Committee that if I am confirmed, I will continue to do so as a federal judge.

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

Response: If confirmed, I will first seek advice from my colleagues regarding their most effective methods in managing their caseloads. As I have done for the past ten years as a state judge, I will maintain a log of my cases so that I can track their progress from filing to resolution. I will issue detailed scheduling orders, including reasonable but firm deadlines for the parties. I will conduct regular status conferences and order mediation where appropriate.

- 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 that judges have an important role in controlling the pace and conduct of litigation. If confirmed, I will control my docket in several ways. I will maintain a progress log of the cases assigned to me. At the earliest opportunity, I will ask the parties in each case how I can best assist them in advancing the case to trial or otherwise reaching a resolution. I will also issue detailed scheduling orders, including regular status conferences and mediation where appropriate.

- 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: In every case that comes before me, I read the motions and other pleadings filed by the parties, and I research the applicable case law. When oral argument is necessary, I give the parties a sufficient opportunity to argue their positions. In reaching my decisions, I apply the facts to the applicable law. After thorough consideration, I issue fair and just rulings grounded in the law.

- 14. 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: I have had no such contact.

- 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.

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

Response: I received these questions from the Department of Justice's Office of Legal Policy on April 8, 2014, and immediately began preparing my answers. After completing my answers, I submitted them to the Office of Legal Policy for review. Thereafter, I made revisions and finalized my answers for submission to the Committee.

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

Response: Yes.

**Responses of Darrin P. Gayles,
Nominee, United States District Judge for the Southern District of Florida
to the Written Questions of 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 judges must decide each case on its own merits, based on the facts and applicable law, and I have done so in the ten years I have served as a Florida state judge. Judges must apply the law faithfully and impartially, and must at all times maintain the dignity of the court. I have not sufficiently studied the opinions of the justices from the Warren, Burger, and Rehnquist Courts to be able to determine which justice's philosophy is most analogous with mine.

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 interpreted the Second Amendment by looking to the normal and ordinary meaning of words as they were understood at the time of the Amendment's ratification. If confirmed, I would interpret the Constitution consistent with such guidance provided by the Supreme Court in *Heller* and all Supreme Court and Eleventh Circuit precedent.

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, I will faithfully follow Supreme Court and Eleventh Circuit precedent.

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, I would follow the Supreme Court's decision in *Garcia* as well as other related Supreme Court and Eleventh Circuit precedent regarding state sovereign interests. See, e.g., *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (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 addressed the scope of, and limitations on, Congress' regulation of non-economic activity pursuant to the Commerce Clause in *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *Gonzales v. Raich*,

545 U.S. 1 (2005). In his concurring opinion in *Raich*, Justice Scalia recognized that Congress may regulate noneconomic activity if the regulation is a necessary part of a more general regulation of interstate commerce. See *Raich* at 37. If confirmed, I would follow all Supreme Court and Eleventh Circuit precedent regarding Congress' power under the Commerce Clause.

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

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952), the Supreme Court held that the President's authority to issue an executive order or take executive actions "must stem either from an act of Congress or from the Constitution itself." If confirmed, I would follow Supreme Court and Eleventh Circuit precedent to resolve questions regarding executive orders and actions.

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

Response: A right is fundamental for purposes of the substantive due process doctrine if it is specifically protected by the Bill of Rights or if it is "objectively, deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal quotations and citations omitted). If confirmed, I would follow Supreme Court and Eleventh Circuit precedent to determine 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: Because legal classifications, such as race, alienage, and national origin, are seldom relevant to the achievement of any legitimate state interest, such classifications are subjected to strict scrutiny. See *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Other classifications, including gender and illegitimacy, require intermediate scrutiny. *Id.* at 440-41. If confirmed, I would follow Supreme Court and Eleventh Circuit precedent in deciding all issues under the Equal Protection Clause.

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 have no expectations regarding the future use of racial preferences in public higher education. If confirmed, I would follow *Grutter*; *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013); and other Supreme Court and Eleventh Circuit precedent regarding the consideration of race in public higher education.