

**Senator Grassley  
Questions for the Record**

**Carlos Mendoza,  
Nominee: U.S. District Judge for the Middle District of Florida**

- 1. 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. Demographic factors should play no role in the outcome of any case.

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

Response: The Supreme Court "has long recognized that the government may . . . accommodate religious practices . . . without violating the Establishment Clause." *Cutter v. Wilkinson*, 544 U.S. 709, 713-14 (2005) (internal citations and quotations omitted). With respect to any case that presented First Amendment issues, as with all other issues, I would follow precedent from the Supreme Court and the Eleventh Circuit Court of Appeals.

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

Response: The most important attribute of a judge is neutral detachment. My professional experiences as a Marine, a Naval Officer, a lawyer and a state trial judge taught me that effective decision makers rely on intellect and reason. I continue to draw from those experiences as a state trial judge and if confirmed, I will continue to embody this trait moving forward.

- 4. 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 maintain a patient, calm and respectful temperament in order to create an environment where contested legal matters may be effectively litigated. I believe I meet this standard as evidenced by my performance managing a challenging docket in state court.

- 5. 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: Yes. *Stare decisis* preserves and promotes the finality and consistency that judicial determinations offer those parties seeking resolution of contested legal matters. I am committed to faithfully abiding by the decisions of higher courts.

**6. 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. The quoted language is binding legal authority.

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

Response: The term “lawful marriages” as stated by Justice Kennedy refers to same-sex marriages deemed lawful by certain 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>**

**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.**

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

<sup>2</sup> *Id.* 2689-2690.

Response: Yes. The quoted language is binding legal authority, as is the rest of the Court's opinion.

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

Response: Yes. I commit to giving all portions of the Court's opinion full force and effect.

**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. The quoted language is binding legal authority, as is the rest of the Court's opinion.

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

Response: Yes. I commit to giving all portions of the Court's opinion full force and effect.

**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. The quoted language is binding legal authority, as is the rest of the Court's opinion.

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

Response: Response: Yes. I commit to giving all portions of the Court's opinion full force and effect.

**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**

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

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

**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.**

Yes. The quoted language is binding legal authority, as is the rest of the Court’s opinion.

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

Response: Response: Yes. I commit to giving all portions of the Court’s opinion full force and effect.

- 7. 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 confirmed, I would first consider the plain meaning of the statutory language at issue. If the language is clear and unambiguous my inquiry would cease. If not, I would seek guidance from closely-related legal authority promulgated by the United States Supreme Court and the Eleventh Circuit Court of Appeals. These principles also guide my service as a state trial judge.

- 8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the decision without reservation.

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

Response: Duly enacted congressional legislation is presumptively constitutional. Enactments of Congress should be left undisturbed unless they clearly run afoul of the Constitution or in instances where Congress clearly exceeds its constitutional authority.

- 10. 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 confirmed, I will not rely on foreign law nor will I be guided by the views of the world community.

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

- 11. 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: As a combat-decorated Marine, a judge advocate in the United States Navy and a sitting Circuit Court judge in the State of Florida, I believe I have a track record of faithfully upholding the Constitution of the United States. It is my hope that my track record would allay any concerns.

- 12. 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: As a state trial judge, I have a track record of neutral detachment in all the matters I have had the privilege of presiding over. Inserting one's personal views into the decision making process denies litigants both fairness and consistency, thereby interfering with the effective and efficient administration of justice.

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

Response: If confirmed, I will be engaged, active and available in managing every aspect of any docket I have the privilege of presiding over. When arriving in Putnam County, Florida to serve as a state trial judge, the felony criminal caseload in Putnam County was the highest in the entire circuit, nearly double the next highest caseload and more than three times the lowest caseload. Two years subsequent to my being assigned to this challenging docket, the Putnam County caseload is now consistently the lowest in the circuit. That is a model I will strive to replicate.

- 14. 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. A docket will move at the pace a judge requires. My experiences managing a congested caseload have enabled me to find the balance between efficiency and effectiveness. If confirmed, I will work diligently to create a positive work environment with clearly established expectations that will foster and promote the effective and efficient administration of justice.

- 15. 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: I carefully review the evidence, arguments and legal authority presented by all litigating parties. I then consider those submissions and conduct additional legal research when necessary. My research focuses on decisions promulgated by the Fifth District Court of Appeal and the Supreme Court of Florida. I strive to craft orders and opinions that offer

transparency and clarity. In the pursuit of closure and finality parties must understand not only the decision, but the rationale in support thereof.

**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”. 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 am not nor have I ever been a member or otherwise associated with 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 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 the questions via e-mail on Wednesday, April 9, 2014. I prepared responses over the course of several days then forwarded my responses to the Office of Legal Policy on April 13, 2014. On April 22, 2014, I finalized my responses and authorized transmittal to the Committee.

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

Response: Yes.

**Questions for the Record  
Senator Ted Cruz**

**Carlos Mendoza,  
Nominee: U.S. District Judge for the Middle District of Florida**

**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: As a trial court judge my judicial philosophy is guided by patience, impartiality and respect for the rule of law. If confirmed as a federal judge, I will continue applying those principles in maintaining the efficient and effective administration of the judicial process. I am unfamiliar as to the specific judicial philosophies of the Supreme Court justices from the Warren, Berger and Rehnquist Courts, in order to analogize their philosophies to my own.

**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: Yes. The Supreme Court has looked to original public meaning to interpret the Constitution in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed I will abide by the *Heller* decision and all decisions promulgated by the United States Supreme Court and the Eleventh Circuit Court of Appeals.

**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 not overrule binding 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: A hallmark of our system of justice is the strict adherence to binding legal authority. If confirmed, I will not abandon my impartial role by injecting personal views into the decision making process. I will follow the *Garcia* decision and all decisions by the United States Supreme Court and the Eleventh Circuit Court of Appeals, regardless of whether I agree or disagree.

**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 has been critical of Congress' authority under the Commerce Clause to regulate certain types of non-economic activity. In *United States v. Lopez*, 514 U.S. 549 (1995), for example, the Court defined three broad categories of activity Congress could lawfully regulate under the Commerce Clause and found the federal law at issue in that case to be unconstitutional in part because it regulated non-economic activity. If confirmed, I would strictly adhere to this and all binding precedent.

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

Response: The President's authority to act must come from the United States Constitution or from Congress. Disputes arising over the exercise of presidential executive authority are properly resolved by the judiciary consistent with Justice Jackson's concurring opinion in *Youngstown Sheet and Tube Company v. Sawyer*, 343 U.S. 579 (1952), which has subsequently been adopted by the Supreme Court in *Medellin v. Texas*, 552 U.S. 491, 524-25 (2008).

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

Response: A right is fundamental through the prism of the substantive due process doctrine when the right is "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, 720-21 (1997) (internal citations and quotations omitted). The Supreme Court further requires "a careful description of the asserted fundamental liberty interest" in substantive due process cases. *Id.* If confirmed, I will follow this and all binding legal authority.

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

Response: The United States Supreme Court opined that legislative classifications based on race, alienage, national origin, gender or illegitimacy require a heightened scrutiny analysis under the Equal Protection Clause. "Similar oversight by the courts is due when state laws impinge on personal rights protected by the Constitution." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1995). If confirmed, I will follow this and all binding legal authority.

**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 quote is a prediction by the Supreme Court that racial preferences "will no longer be necessary to further the interest approved today." *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003). If confirmed, I will strictly follow precedent and set any personal beliefs and expectations aside.