

Responses of Robin L. Rosenberg
Nominee, United States District Judge for the Southern District of Florida
to the Written Questions of Senator Grassley

- 1. You indicated in your questionnaire that you have limited experience in criminal law, either as an attorney or a judge. What steps have you taken or do you plan to take to address to get up to speed in criminal law matters?**

Response: As a state circuit court judge, I have been assigned to the criminal division since September 2013 and have presided over approximately 23 criminal trials, 10 motion to suppress hearings and at least 1,900 plea bargains, as well as other routine matters that arise in the criminal division of our circuit court. In addition, in preparation for my rotation into the criminal division, I attended judicial education courses in order to ensure that I am well versed in criminal law matters. I will continue to preside over criminal law matters as a state circuit court judge and will continue to avail myself of all educational opportunities on criminal law matters.

- 2. You have been involved in the campaign of several Democratic candidates over the years. What assurances can you give any future potential litigants who may not share your political beliefs that you will be fair and impartial as a judge?**

Response: My political beliefs have never and will never come into play in the judicial decision making process. Every litigant who appears before me as a state circuit court judge, regardless of his/her political beliefs, is treated fairly and impartially. If confirmed as a United States District Court Judge, I will treat all litigants fairly and impartially, regardless of his/her political beliefs.

- 3. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?**

Response: If confirmed as a United States District Court Judge, I would avoid such qualities or characteristics as: lack of preparation, impatience, inefficiency in the management of my docket, arrogance, disrespect of litigants and attorneys, and partiality and the appearance of partiality in my rulings and demeanor.

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

Response: The most important attribute of a judge is impartiality. As a state circuit court judge for the past eight years, I have been impartial in every case over which I have presided and would maintain this attribute if I am confirmed as a United States District Court Judge.

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 must be patient, respectful, attentive and even-tempered with all people who appear in the courtroom. For many, a judge is the face of the judicial system and a judge's actions, words and temperament are what leave people with a sense of trust and confidence in the system - their system. I consider each of these elements of judicial temperament to be important and I believe that I have exhibited these traits as a state circuit court judge for the past eight years.

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: If I am confirmed as a United States District Court Judge, I will follow the precedents of the Supreme Court and the Eleventh Circuit and faithfully give them full force and effect. My personal views have never and will never come into play in the judicial decision making process.

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 of 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: I do understand this statement to be part of the holding of *Windsor* and to be 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" refers to same-sex marriages deemed lawful by the State.

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

- iii. **Is it your understanding that this holding and precedent is limited to circumstances in which states have legalized or permitted same-sex marriages?**

Response: Yes, it is my understanding that this holding is limited to circumstances in which states have legalized or permitted same-sex marriages.

- iv. **Are you committed to upholding this precedent?**

Response: Yes, I am committed to upholding this 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, I understand that this portion and all portions of the court's opinion are binding Supreme Court precedent entitled to full force and effect by the lower courts.

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

Response: Yes, I commit to giving this portion and 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."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, I understand this portion and all portions of the court's opinion are binding Supreme Court precedent entitled to full force and effect by the lower courts.

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, I commit to give this portion and 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.'"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, I understand this portion and all portions of the court's opinion are binding Supreme Court precedent entitled to full force and effect by the lower courts.

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

Response: Yes, I commit to give this portion and 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 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.**

Response: Yes, I understand this portion and all portions of the court's opinion are binding Supreme Court precedent entitled to full force and effect by the lower courts.

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

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

Response: Yes, I commit to give this portion and all portions of the Court's opinion full force and effect.

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 employ, in deciding cases of first impression?**

Response: If there were no controlling precedent from the Supreme Court or the Eleventh Circuit, I would look to the plain meaning of the statute or constitutional provision at issue. If the language were clear and unambiguous, I would apply the plain meaning of the provision to the facts of the case. If the language were not clear or unambiguous, I would look to Supreme Court and Eleventh Circuit precedent in cases with analogous facts and issues. If there is no Supreme Court or Eleventh Circuit precedent with analogous facts and issues, I would look to other federal appellate cases with analogous facts and issues for guidance 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: I would apply the decision. My personal views have never and will never come into play in the judicial decision making process.

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

Response: Statutes enacted by Congress are presumed to be constitutional. The only instances in which it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional is if, when necessary to resolve a question properly before the court, the statute clearly violates a provision of the Constitution or Congress exceeded its authority.

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, it is never proper for judges to rely on foreign law, or the views or the "world community", in determining the meaning of the Constitution.

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: As a state circuit court judge, my decisions always have been grounded in precedent and the text of the law. If confirmed as a United States District Court Judge, my decisions will remain grounded in precedent and the text of the law. Political ideology or motivation has never and will never come into play in the judicial decision making process.

13. What assurances or evidence can you give this Committee and future litigants that you will put aside personal views and be fair to all who appear before you, if confirmed?

Response: As a state circuit court judge, my personal views have never come into play in the judicial making process and I am fair to all who appear before me in court. If confirmed as a United States District Court Judge, my personal views will never come into play and I will be fair to all who appear before me.

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

Response: As a state circuit court judge having served in the civil, foreclosure and criminal divisions, I always have made case management a priority. One technique I initiated and use is the use of technology for litigants and attorneys to schedule hearings before the court through an on-line scheduling system. If confirmed as a United States District Court Judge, I will continue to place a high priority on the active management of my caseload in order to ensure that cases move through the system in a timely and efficient manner. I will employ all tools available to help manage my caseload, including the innovative use of technology. I proactively will monitor cases through such measures as case management orders and conferences, which are intended to set realistic but enforceable deadlines for discovery, motions, mediation and trial. I will ensure that motions are ruled on promptly.

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: I believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed as a United States District Court Judge, I will control my docket in the following ways: I will remain apprised of all cases on my docket and the status of the cases; I will set status conferences if cases have shown little or no activity for long periods of time; I will rule on motions in a timely manner; I will set realistic and enforceable deadlines for completion of the different stages of litigation and provide the necessary oversight to ensure that deadlines are met; and I will be accessible to litigants and attorneys so that they understand the functioning of the court's docket and can meet the court's expectations of the pace and conduct of the litigation.

16. 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: Before I reach a decision in cases that come before me, I review all of the written submissions of the parties, the case law cited in the written submissions and any additional case law and/or statutes based on my own research. If there is oral argument on a motion, I will be prepared to ask questions and listen to the arguments made by the litigants and/or attorneys. I will either make an oral ruling from the bench or take the matter under advisement following the hearing and issue a written order. My rulings, whether oral or written, set forth the applicable law, the facts of the case and the basis for the court's ruling.

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."

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associate 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 make 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: On May 27, 2014, I received these questions from the Office of Legal Policy at the Department of Justice. I thoroughly reviewed the questions and prepared my answers. Thereafter, I submitted my answers to the Office of Legal Policy and made some revisions before submitting my answers to the Committee.

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

Response: Yes, these answers reflect my true and personal views.

**Responses of Robin L. Rosenberg
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: My judicial philosophy as a state court judge for the past eight years has been to be fair, impartial, unbiased, open-minded and respectful of all persons who appear in the courtroom. I employ case management techniques to ensure that cases move efficiently through the system so that every litigant receives justice and finality in a fair and timely fashion. I do not possess sufficient knowledge of the judicial philosophy of the Justices who served on the Warren, Burger, or Rehnquist Courts to comment as to whether their philosophies are analogous to 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: The Supreme Court has utilized originalism to interpret the Constitution. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court has looked to original public meaning to interpret the Constitution. If confirmed, I would follow *Heller* and all other binding Supreme Court and Eleventh Circuit precedent concerning constitutional interpretation.

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: There are no circumstances in which I would overrule binding precedent as a United States District Court Judge.

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 United States District Court Judge, I would follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) and all other binding precedent. My personal views never come into play in the judicial decision making process.

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

Response: If confirmed as a United States District Court Judge, I would apply the controlling precedent. My personal views never come into play in the judicial decision making process. The United States Supreme Court in *United State v. Lopez*, 514 U.S. 549, 558 (1995) identified three

general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of the channels of interstate commerce; (2) instrumentalities of interstate commerce and persons or things in interstate commerce; and (3) activities that substantially affect interstate commerce. In *United States v. Lopez*, *supra*, and *United States v. Morrison*, 529 U.S. 598 (2000), the United States Supreme Court has also articulated limitations to the reach of the Commerce Clause to certain non-economic activity. In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia's concurring opinion cited the Necessary and Proper Clause in connection with the Commerce Clause to opine that "Congress may regulate even non-economic local activity if that regulation is a necessary part of a more general regulation of interstate commerce."

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 and 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.'"

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 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).

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

Response: Legislative classification based on race, alienage, national origin and gender or when "laws impinge on personal rights protected by the Constitution" require a heightened scrutiny analysis under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985).

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 do not have any expectations as to whether the use of racial preferences in public higher education will no longer be necessary in the future. If confirmed as a United States District Court Judge, I will follow *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) and all other controlling precedent.