

**Senator Grassley  
Questions for the Record**

**Eleanor Louise Ross,  
Nominee, U.S. District Judge for the Northern District of Georgia**

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

Response: The most important attribute of a judge is integrity, an attribute that I have displayed throughout my service as a state judge and as a state and federal prosecutor prior to becoming a judge.

**2. 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: My view of the appropriate judicial temperament is one that combines patience, humility, attentiveness, and respect for the litigants as well as for the legal profession itself. Yes, I believe I meet this standard and have demonstrated it throughout my service as a state judge.

**3. 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 would honor my commitment to follow the precedent of higher courts faithfully and give it full force and effect, without regard to any personal opinions and beliefs that I may have.

**4. 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 on an issue presented to me, I would look to the clear and unambiguous language of the issue in question. If that language were unclear and ambiguous, I would consider related and similar language as guided by precedent from the Supreme Court and the Eleventh Circuit. I would also consider other federal appellate court decisions interpreting similar language as persuasive authority.

**5. 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 honor my commitment to follow the applicable precedent without regard to any personal opinions and beliefs that I may have.

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

Response: If at all possible, a federal court must decide issues without addressing the constitutionality of a federal statute. If a court must address the constitutionality of a statute, the statute should be presumed constitutional. Only where Congress has clearly exceeded its authority to enact the statute or where the statute violates a provision of the Constitution is it appropriate for a federal court to declare that statute unconstitutional.

**7. 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, I do not believe it is proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the U.S. Constitution. If confirmed, I would not rely on such sources.

**8. 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 best assurance or evidence I can give that, if confirmed, my decisions will remain grounded in precedent rather than in any personal motivation, is my demonstrated record as a state judge which reflects that I have always rendered my rulings based on the text of the law without influence of any personal opinions or beliefs I may have. If confirmed, I would continue to decide issues in this same manner.

**9. 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: The best assurance or evidence I can give that, if confirmed, I will put aside any personal views and be fair to all who appear before me, is my demonstrated record as a state judge of fairness, respectfulness and a showing of dignity to all litigants who have appeared before me without regard to any personal opinions or beliefs I may have. If confirmed, I would continue to display these same attributes.

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

Response: If confirmed, I will manage my caseload by employing many of the same tools on which I rely as a state judge. These include issuing pretrial orders with definitive deadlines, scheduling pretrial conferences, acting when necessary to help resolve discovery disputes, and promptly ruling on pretrial matters.

**11. 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 do believe that judges have a major role in controlling the pace and conduct of litigation. If confirmed I would issue and abide by clear and definitive scheduling orders and hold appropriate status conferences to insure the best use of judicial economy.

**12. 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: As a judge, I reach decisions in cases before me by first reviewing the briefs and legal memoranda submitted by the litigants. Based on my review of these documents and any additional research I feel is necessary, I prepare my own outline of the issues along with questions I would like answered by the litigants at the scheduled hearing. I also consider requests made by either litigant to further brief certain issues within a reasonable amount of time that comports with the scheduling order. The sources to which I look for guidance are usually cases from the Georgia Supreme Court, Georgia Court of Appeals, and U.S. Supreme Court (in particular for issues related to Fourth and Fifth Amendment rights of criminal defendants). I then apply the applicable law to the facts before me.

**13. 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, I understand the majority opinion in its entirety to be part of the holding and thus binding legal authority.

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

Response: By “lawful marriages,” Justice Kennedy is referring to same-sex marriages deemed lawful by the State.

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

**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, I am committed to upholding all precedent of 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.”<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.**

Response: Yes, I understand the majority opinion in its entirety to be 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 the entirety of the majority 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, I understand the majority opinion in its entirety to be 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 the entirety of the majority opinion full force and effect.

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

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

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, I understand the majority opinion in its entirety to be 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 the entirety of the majority 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.’”<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.**

Response: Yes, I understand the majority opinion in its entirety to be 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 the entirety of the majority opinion full force and effect.

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,**

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

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

**please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No, I have not had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group that I knew to be associated with the AAJ.

- 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 the questions by email from the Office of Legal Policy at the Department of Justice on May 20, 2014. I reviewed the questions, prepared my responses and then forwarded them to the Office of Legal Policy for review. After briefly discussing my responses with an attorney in the Office of Legal Policy, I finalized my responses to be forwarded to the Committee.

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

Response: Yes.

**Questions for the Record  
Senator Ted Cruz**

**Eleanor Ross,  
Nominee: U.S. District Judge for the Northern District of Georgia**

**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 state judge, my judicial philosophy has been one which embodies impartiality and consideration for all litigants appearing before me, attentiveness to the issues presented, respect for the legal process by rendering prompt and clear rulings, and faithful application of the law to the facts. Although I am familiar with various opinions from the Warren, Burger and Rehnquist Courts, I have not studied the judicial philosophy of any U.S. Supreme Court Justice to analogize their philosophies 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: Yes, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court employed the original public meaning model of interpretation when analyzing the Second Amendment. If confirmed I would follow *Heller, supra*, as well as other applicable 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, there are no circumstances under which I would overrule 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, supra*, as well as other relevant Supreme Court precedent concerning the constitutional limits on Congress’ authority such as *Printz v. United States*, 521 U.S. 898 (1997) and *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 determined there are limitations on Congress’ regulation of certain non-economic activity pursuant to the Commerce Clause. See *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would

consider the type of activity being regulated and apply this precedent as well as other applicable precedent to the facts before me.

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

Response: The President’s ability to issue executive orders or executive actions “must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952); *Medellin v. Texas*, 552 U.S. 491, 524-525 (2008). If confirmed, I would follow the precedent set forth by these cases as well as other applicable precedent.

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

Response: For purposes of the substantive due process doctrine, a right is fundamental if it is “...objectively, ‘deeply rooted in this Nation’s history and tradition and so rooted in the traditions 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, 720-721 (1997) (internal citations omitted). If confirmed, I would follow this standard and all applicable precedent in deciding issues relating to the determination of a fundamental right.

**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, and national origin are subjected to heightened scrutiny under the Equal Protection Clause because such classifications are rarely relevant to the furtherance of a legitimate state interest. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). If confirmed, I would follow and apply precedent of the Supreme Court and the Eleventh Circuit Court of Appeals in identifying any classification requiring heightened scrutiny 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: If I am confirmed, I will follow all applicable precedent relating to the use of racial preferences in public higher education without regard to any personal expectations or beliefs that I may have.