

Questions for the Record
Senator Grassley

Gregory N. Stivers,
Nominee, U.S. District Judge for the Western District of Kentucky

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

The most important attribute of a judge is dedication: to work hard to decide cases and issues expeditiously; to maintain impartiality; and to treat all persons coming before the court with courtesy and respect.

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?

In my view the appropriate temperament of a judge should be one of respectfulness to the parties and attorneys appearing before the court to ensure that the parties believe that their case has been decided fairly and impartially. If confirmed, I believe I will meet this standard.

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.

As a district court judge, I would be bound by decisions of the U.S. Supreme Court and the Sixth Circuit Court of Appeals. I would give these precedents full force and effect regardless of any personal disagreement I may have with those decisions.

4. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedents and give them full force and effect, regardless of whether he or she personally agrees or disagrees with those precedents. 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."¹

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

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

Yes. That statement is part of the holding in *Windsor*.

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

It is my understanding that by “lawful marriages”, Justice Kennedy was referring to marriages which are entered into under state law.

- 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?**

Yes.

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

Yes. If I were confirmed, I would be committed to follow this case or other applicable precedent issued by the U.S. Supreme Court.

- 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.**

Yes.

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

If confirmed, I would be committed to giving full force and effect to this and other binding Supreme Court precedents.

- c. Justice Kennedy also wrote, “The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens.”³**

² *Id.* 2689-2690.

³ *Id.* at 2691.

- 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.

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

Yes. If confirmed, I would be committed to giving full force and effect to this and other binding U.S. Supreme Court precedents.

- 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.**

Yes.

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

Yes. If confirmed, I would be committed to follow this case and other binding U.S. Supreme Court precedents.

- 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.**

Yes.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

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

Yes. If confirmed, I would be committed to follow this case and other applicable precedent established by the U.S. Supreme Court and the Sixth Circuit Court of Appeals.

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?

If faced with a case of first impression regarding interpretation of a statute, I would first look to the text of the applicable statute to see if its meaning was clear from the text alone or to see if there was binding U.S. Supreme Court or Sixth Circuit Court of Appeals precedent that had already interpreted the statute. If there was no binding precedent and if the statutory language was ambiguous I would resort to canons of statutory construction to attempt to discern the statute’s meaning. In a case of first impression regarding interpretation of the U.S. Constitution, I would look to the text and original public meaning of the language used by the drafters and would utilize analogous rulings of the U.S. Supreme Court and the Sixth Circuit Court of Appeals to guide my decision.

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?

I would follow binding precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals regardless of my personal beliefs regarding the decision.

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

Statutes enacted by Congress should be declared unconstitutional only when the statute clearly violates the Constitution or when Congress exceeds its authority under the Constitution.

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.

As a district court judge, I do not believe it would be proper to rely on foreign law or views of the “world community” in determining the meaning of the Constitution, which is a domestic document.

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?

In almost thirty years of practicing law, I have represented my clients zealously without regard to my personal beliefs or political views. I can give my assurance that, if confirmed, I will decide cases before me based on the applicable law without regard to my personal beliefs.

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?

Over the course of my career I have developed a reputation as an attorney who has dealt fairly with clients and opposing counsel without regard to any differences which may have existed between my personal views and the substantive positions of my client or opposing parties. I can give my personal assurance that I will use my best effort to be fair to all who appear before me.

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

I intend to use a case manager and to utilize the magistrate judges to assist in managing my caseload to enable me to issue rulings in an expeditious manner. I will be diligent in meeting with attorneys to provide reasonable and manageable deadlines to keep the cases moving.

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?

I believe that judges can play an important role in making sure cases keep moving toward resolution, whether by dispositive motion, settlement, or trial. Maintaining periodic status conferences can be an effective method to ensure that cases do not languish on the docket.

13. 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?

In deciding cases before me, I would look to the motions and briefs of the parties and would search for any other applicable precedent in considering the merits. Having spent my career in civil litigation, the most difficult part of the transition will be learning the criminal part of the docket. I did have experience as the foreperson of the federal grand jury which gave me insight into that process. I have also attended several sentencing, revocation, and suppression hearings to begin my preparation, in addition to reviewing the Federal Rules of Criminal Procedure and the Guidelines Manual of the United States Sentencing Commission.

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.**

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 made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

No.

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

I received these questions on August 5, 2014. I reviewed the questions and drafted an initial response. I then edited my responses, submitted them to the Department of Justice and discussed my responses with a representative of the Department of Justice on September 3, 2014. Following that discussion, a few minor revisions were made before the present submission.

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

Yes.

Questions for the Record
Senator Lee

Gregory N. Stivers,
Nominee, U.S. District Judge for the Western District of Kentucky

1. Mr. Stivers, how would you describe your approach to statutory interpretation?

a. To what sources would you look in deciding a case that turned on interpretation of a federal statute?

In interpreting a statute, I would first look to the text of the statute to see if its meaning was clear from the text alone or to see if there was binding U.S. Supreme Court or Sixth Circuit Court of Appeals precedent that had already interpreted the statute. If there was no binding precedent and if the statutory language was ambiguous I would look next to the canons of statutory interpretation to attempt to discern the statute's meaning.

b. Does a statute have a purpose beyond the purpose expressed in the enacted text of the legislation and if so, how would a judge be capable of adducing a statute's purpose?

Statutes are to be applied in accordance with their plain language, because the text of the statute is the best evidence of the statute's purpose. Other considerations, such as statutory intent, are to be resorted to only when the statutory language is ambiguous.

2. Mr. Stivers, what role do the text and original meaning of a constitutional provision play in interpreting the Constitution?

The U.S. Supreme Court has relied on the text and original meaning of Constitutional provisions in many cases. For instance, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court relied upon the Second Amendment's original public meaning. I would faithfully apply this and any other applicable precedent in interpreting the Constitution.

a. To what extent are broadly worded constitutional provisions, such as the Equal Protection Clause, limited to the applications potentially foreseeable by their Framers, as opposed to announcing enduring principles that must subsequently be applied to new unfolding circumstances?

If confirmed, I will follow the precedents established by the U.S. Supreme Court and the Sixth Circuit Court of Appeals in construing the scope of the Equal Protection Clause or other broadly worded constitutional provisions.

**Questions for the Record
Senator Ted Cruz**

**Gregory N. Stivers,
Nominee, U.S. District Judge for the Western District of Kentucky**

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.

If I am confirmed, my judicial philosophy will be to work hard to decide cases before me fairly, impartially, and expeditiously, in accordance with the plain language of applicable statutes and precedents established by the U.S. Supreme Court and the Sixth Circuit Court of Appeals. I am not familiar enough with the respective judicial philosophies of the Supreme Court Justices on the Warren, Burger, or Rehnquist Courts to make a comparison 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)?

The U.S. Supreme Court has relied on the text and original meaning of Constitutional provisions in many cases. For instance, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court relied upon the Second Amendment’s original public meaning. If confirmed, I would interpret the Constitution in accordance with established precedent, including *Heller*.

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?

If confirmed as a district court judge, I would not overrule any precedent of the U.S. Supreme Court or the Sixth Circuit Court of Appeals.

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).

If confirmed as a district court judge, I would follow *Garcia* without regard to any personal opinion I may have regarding the holding of the case.

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

In ruling on issues related to the extent of Congress’ power under the Commerce Clause, I would follow the precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals in determining whether that power extends to non-economic activity. *See, e.g., United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000).

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

As the U.S. Supreme Court has recognized, “[t]he 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.’” *Medellín v. Texas*, 552 U.S. 491, 524 (2008) (internal citations omitted). The Court has recognized the proper analysis for reviewing executive orders or actions is set forth in Justice Jackson’s concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634-55 (1952). If confirmed as a district court judge, I would follow the precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals in reviewing executive orders or actions.

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

The U.S. Supreme Court has defined fundamental rights as being “those fundamental rights and liberties which are, 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 omitted). If confirmed as a district court judge, I would follow this and other applicable precedent of the U.S. Supreme Court and Sixth Circuit Court of Appeals for the purpose of substantive due process analysis.

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

The U.S. Supreme Court has recognized two forms of heightened scrutiny under the Equal Protection Clause: strict scrutiny and intermediate scrutiny. The Court has applied strict scrutiny to any law creating classifications based upon “race, alienage, or national origin,” or “when state laws impinge upon personal rights protected by the Constitution.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). The Court has applied intermediate scrutiny to laws creating classifications based upon gender or illegitimacy. *See id.* at 440-41. If confirmed as a district court judge, I would follow the applicable precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals in analyzing classifications 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).

In ruling on issues related to the use of racial preferences in public higher education I would follow the established precedent of the U.S. Supreme Court and the Sixth Circuit Court of Appeals, regardless of any personal expectations I may have.