

**Response of Jeffrey L. Schmehl**  
**Nominee to be United States District Judge for the Eastern District of Pennsylvania**  
**to the Written Questions of Senator Chuck Grassley**

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

Response: A good judge needs many attributes, but the three most important, in my opinion, are courtroom experience, proper judicial temperament, and a good work ethic. Throughout my career as a prosecutor, trial attorney, and trial judge, I believe I have demonstrated the experience and knowledge necessary to be a good trial court judge. I also possess the proper judicial temperament in that I am respectful to all attorneys and litigants, never lose my temper, and have a respectful and pleasant demeanor in the courtroom. Lastly, in today's day and age, a judge that must preside over crowded dockets must have a good work ethic in order to process the case loads assigned. I believe I have demonstrated all of these attributes in my fifteen years on the Berks County Bench.

**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: I believe that a trial judge must be even-keeled, respectful, and transparent. If a judge demonstrates all three of those things, he or she will have the appropriate temperament. Additionally, a judge's demeanor should reflect that he is impartial, thoughtful, and dignified. I believe I have demonstrated this temperament throughout my years as a 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: I am certainly committed to following the precedent of the Third Circuit Court of Appeals and the United States Supreme Court faithfully and giving them full force and effect. I have done that for the past fifteen years with the Pennsylvania intermediate appellate courts and the Supreme Court of Pennsylvania. I believe it is vitally important for consistency, and for the expectations of the bar and the litigants, to follow prior precedent.

**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: If confirmed and faced with a case of first impression, I would first consider any related United States Supreme Court decisions, and then any related decisions by the Third Circuit Court of Appeals. I would also examine the text of the governing law in

question, and the legislative history, if any. I would also look to what other courts and other circuits have ruled, acknowledging that they are not binding on my court, but reviewing the rationale and reasons behind their decisions and if thoughtful and appropriate, following the same.

- 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: If I believed that the United States Supreme Court or the Third Circuit of the Court of Appeals had seriously erred in rendering a verdict, I would still feel constrained to follow the precedent that was set. In order to have a system that is fair, predictable, and reliable, a trial court judge must follow precedent.

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

Response: Any statute passed by Congress is strongly presumed to be constitutional, depending upon the rights affected and the appropriate level of scrutiny according to precedent. If confirmed and called upon to review a statute, as a trial court judge, I would consider it constitutional and look to uphold the constitutionality of it. Only if a statute is clearly and unequivocally not in conformance with the Constitution as interpreted by the Supreme Court and the relevant Circuit Court of Appeals should it be declared unconstitutional by a federal district court judge.

- 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: I cannot think of any circumstance where it would be proper for a judge to rely on foreign law or the view of the world community in determining the meaning of any part of the United States Constitution.

- 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: I have always followed the precedent of the Pennsylvania Superior Court, Pennsylvania Commonwealth Court, and Pennsylvania Supreme Court. A trial court judge should not be making new law, but should be following the laws as passed by the legislative body and as reviewed and acted on by the higher courts. In making a decision, a judge should consider that the decision could be appealed and by following precedent, the judge can then feel confident that his decision would be affirmed on appeal.

- 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: During my fifteen years as a state trial court judge, I have never put my personal views before the law. I have also strived to be fair to all that have appeared before me. It is every judge's duty to strive to be a fair and impartial judge. The parties, the litigants and the attorneys expect and demand that from the judge they appear before.

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

Response: I believe that my extensive experience as a trial attorney and a trial judge gives me a unique view to estimate which cases will take up a significant amount of judicial time and which cases will not. I am always directly involved with scheduling cases and, if confirmed, will continue to be. By doing this, I believe judicial time could be maximized and judicial economies can be achieved. Furthermore, in addition to having a hands-on approach with scheduling all matters in my courtroom, I would also actively monitor all cases assigned to my docket, conduct necessary hearings promptly, and rule on all matters in a timely fashion. I would also utilize United States Magistrate Judges in my district to expedite settlements and/or trials of any and all cases on my docket. Lastly, and as always, I would be available at all possible times to parties in civil actions to conduct settlement conferences.

**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: I believe that a Federal District Judge has a role in controlling the pace and the conduct of litigation. If confirmed, I would regularly monitor the cases on my docket, establish and enter case management orders with reasonable but firm deadlines, and make myself available to the parties for pretrial settlement conferences.

**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: When attempting to make a decision, I ask both sides for the cases they feel are most on point as to the arguments and positions they are taking. I start by reviewing those cases; however, the facts of a particular case are not always on point with the prior cases that have been decided by the appellate courts. A judge must evaluate the facts of a particular case, thoroughly research the law, and look at the rationale other judges have used in deciding cases similar to the case at hand.

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

Response: I received these questions via email on February 20, 2013. I drafted responses and forwarded them to the Department of Justice on February 21, 2013. I discussed my responses with a representative of the Department of Justice and authorized the Department of Justice to submit the responses to the United States Senate.

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

Response: Yes.

**Response of Jeffrey L. Schmehl  
Nominee to be United States District Judge for the Eastern District of Pennsylvania  
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

**Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: My judicial philosophy is one of respectful demeanor, respect of the record, and applying the law to the facts in order to render a proper decision independent of any outside influences. Because the United States of America is a nation governed by the rule of law, I believe that the most important thing a judge can do is apply the law to the facts as he finds them and rule appropriately. I cannot identify with one of the three enumerated Supreme Court Chief Justices, but I have been mostly influenced by judges before whom I have personally appeared.

**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: If confirmed, I would carefully follow all United States Supreme Court and Third Circuit Court of Appeals decisions that utilize an originalist analysis. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). If I were asked to decide a case based upon the interpretation of a constitutional provision that has not been ruled on previously, I would first look at the express language of the provision and examine its plain and ordinary meaning in consideration of the times in which it had been written. If appropriate in those scenarios, I would follow and apply the ordinary meaning. If said provision was ambiguous, I would look to the United States Supreme Court and the Third Circuit Court of Appeals for guidance. If appropriate or necessary, I would go further and look for thoughtful and well reasoned decisions of other federal circuit courts.

**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: I cannot think of any circumstances in which I would overrule precedent as a judge. If a decision is precedent today and is also precedent while I am on the bench, I would feel compelled to follow that precedent.

## Congressional Power

**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: The *Garcia* case represents binding precedent. As such, if confirmed, I would be compelled to follow the rulings in that case and apply the precedent that has been set by the United States Supreme Court.

**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 and asked to decide a question involving the scope of Congress's Commerce Clause power, I would follow the binding precedent of the United States Supreme Court, which indicates that Congress, under the Commerce Clause, "may regulate the use of the channels of interstate commerce," and may "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." *United States v. Lopez*, 514 U.S. 549, 558 (1995). Further, Congress may "regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." *Id.* (citations omitted). The majority opinions in *Lopez*, *id.* at 560-67, and *United States v. Morrison*, 529 U.S. 598, 610-11 (2000), indicate that the economic or non-economic nature of an activity is one important consideration when evaluating whether the Constitution gives Congress the power to regulate that activity. I will follow the precedent set by these and other decisions of the United States Supreme Court and the Third Circuit Court of Appeals.

## Presidential Power

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

Response: Judicial Review is allowable on executive orders and executive actions by the President. The standard is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952) (Jackson, J., concurring). The President must have the power directly derived from the Constitution or directly given to the President through an act of Congress.

## Individual Rights

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

Response: The Supreme Court has identified rights as fundamental when those rights 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) (citations omitted). For a district trial court judge, a right is fundamental when it has previously been so characterized by either the United States Supreme Court or the Third Circuit Court of Appeals. If confirmed, I would apply the precedent that has been set previously by the above two courts.

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

Response: Strict scrutiny under the Equal Protection Clause applies when legislation employs suspect classifications, including race, alienage, or national origin, and an intermediate level of scrutiny applies to classifications based on gender and illegitimacy. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Though not necessarily an issue of classification, heightened scrutiny also applies to review of legislation that affects fundamental rights. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

**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: *Grutter* is now binding precedent in this area of the law. If I were confirmed as a district court judge, I would be bound to follow the *Grutter* case and any subsequent binding precedent in that area regardless of any personal expectations.