

**Response of Landya B. McCafferty  
Nominee, U.S. District Judge for the District of New Hampshire,  
To the Questions of Senator Chuck Grassley**

- 1. You have been a strong proponent of the use of technology in the courtroom, including by Judges. You can share your thoughts on that, if you wish, but I'm particularly curious regarding your views and current practice on the use of cameras in your courtroom.**

Response: As a Federal Magistrate Judge, I am a proponent of judges using technology to increase efficiency and lower costs. I serve on the teaching faculty of the Federal Judicial Center's IT Training Program for New Magistrate Judges, and I also train judges across the country to use the iPad as a tool to assist them in achieving a paperless workflow.

With respect to cameras in my courtroom, I follow the local rule of our court. That rule prohibits the use of cameras in the courtroom, with exceptions for certain types of proceedings, such as ceremonial events sponsored by the court. I am aware, however, that in September 2010, the Judicial Conference initiated a pilot program on cameras in the courtroom. I am not aware of the results of that pilot program. Depending on the outcome of that pilot program, I would be open to the concept of permitting cameras in the courtroom.

- a. Are there privacy rights or other considerations in the courtroom that give you concern?**

Response: Concerns could be raised about the privacy and safety of jurors, prospective jurors, victims of crime, juvenile witnesses, and other witnesses, such as confidential informants. One might also be concerned about litigants' rights to a fair trial and due process to the extent media presence or attention might unfairly impact the actions or concerns of participants in the matters before the court.

- b. If so, how can those concerns be addressed?**

Response: I believe those concerns could be addressed by well-considered local rules that, for example, prohibit the media from filming protected individuals, such as jurors and juvenile witnesses. Such rules appear to work well in many state courts. For instance, in New Hampshire, where broadcasting of court procedures is permitted, my understanding is that the media has respected the limits imposed by the state courts concerning the use of cameras in high profile cases.

**c. What is the current policy and practice in your court regarding the use of cameras?**

Response: Consistent with the policy of the Judicial Conference of the United States, our local rules prohibit the use of cameras in our courtrooms, with exceptions for certain types of proceedings, such as ceremonial events sponsored by the court.

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

Response: While many attributes are critical (e.g., temperament), the most important attribute of a judge is fidelity to the rule of law. In my three years as a federal magistrate judge, I believe I have demonstrated that I adhere to the rule of law in all of my decisions. If fortunate enough to be confirmed by the Senate as a federal district court judge, I will continue to adhere to the rule of law in all of my decisions.

**3. 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: The appropriate temperament of a judge is marked by humility. A judge must function at all times with the understanding that she serves the people in her courtroom, and not the other way around. A judge must be courteous, respectful, and attentive to everyone in her courtroom, and must ensure that all litigants appearing before her have a full and fair opportunity to be heard.

In my courtroom, I treat everyone with respect. In all of my dealings with people throughout my career, I have been respectful and courteous. I believe I have a temperament marked by humility.

**4. 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 deeply committed to the rule of law, which includes following the precedents of higher courts and giving those precedents full force and effect, whether or not I agree with them. As a federal magistrate judge, I have always followed the controlling precedent from the Supreme Court and the Court of Appeals for the First Circuit. In deciding cases, my personal views are irrelevant; I apply the law.

- 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?**

Response: In deciding cases of first impression, I would first turn to the text of the applicable statute, regulation, or provision. If the language of the statute was unambiguous, that language would control. If the language was ambiguous, I would use the canons of statutory construction to assist me in interpreting the language. I would also consider precedents from other courts (i.e., courts outside the Supreme Court and First Circuit) that have interpreted the same or similar statutes -- precedents from other courts would not be controlling but would be worthy of consideration if persuasive. To the extent there were no precedents available whatsoever, I would be bound to follow the methodology employed by the Supreme Court and the Court of Appeals for the First Circuit in interpreting the statute in question.

- 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?**

Response: My personal belief about the correctness of a ruling of the Supreme Court or the Court of Appeals for the First Circuit is irrelevant. If confirmed as a district judge, I will be bound by the decisions of both courts and will follow controlling precedent at all times.

- 7. 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. It is appropriate for a federal court to declare a statute unconstitutional only under narrow circumstances, such as when Congress, in enacting the statute, clearly exceeded its authority under the Constitution or when the statute itself violates the Constitution. If it became necessary to consider the constitutionality of a particular statute, I would apply the standards established in the precedents of the Supreme Court and the Court of Appeals for the First Circuit.

- 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.**

Response: No. It is not proper for judges to rely on foreign law or the views of the "world community" in determining the meaning of the United States Constitution.

**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?**

Response: I can assure the Committee that I am deeply committed to the rule of law. The best evidence of that commitment is my record over the past three years as a federal magistrate judge. A review of my decisions will reveal that they have been grounded in precedent and the text of the law. I have never allowed my personal beliefs to influence my judicial decision-making, and, if confirmed as a district judge, I pledge continued adherence to the rule of law.

**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?**

Response: I assure the Committee that I am deeply committed to the principle of equal treatment under the law. The best evidence of my commitment to put aside personal views and treat all who come before me fairly and impartially is my history as a federal magistrate judge. A review of my decisions will reveal that they are grounded in the law. Many of my hearings are tape-recorded, and if reviewed, they will provide further evidence of my fair and impartial treatment of all of the litigants who have come before me. If confirmed as a district judge, I pledge continued adherence to the principle of equal treatment under the law.

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

Response: If confirmed, I will continue to manage my caseload as I have for the past three years as a magistrate judge. In accordance with the Federal Rules of Civil Procedure, and as soon as possible in my cases, I issue scheduling orders with strict discovery deadlines and firm trial dates. When necessary, I meet with counsel and use status conferences to ensure that litigants are moving their cases toward resolution. As a magistrate judge, one of my primary responsibilities is to manage discovery schedules and resolve discovery disputes for the district judges. I have found that being actively involved in the oversight of a case, and resolving discovery disputes expeditiously, keeps a case on track for trial. If confirmed, I intend to be actively involved in managing all aspects of my cases. In our district the Civil Justice Reform Act is taken very seriously and all the judges take pride in meeting the standards for timely and efficient disposition of matters pending before the court.

**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?**

Response: I believe that judges can and should play a major role in controlling the pace and conduct of litigation. If confirmed, I will play an active role in managing my cases. As early as possible in a case, I will issue a scheduling order with a firm trial date and strict discovery deadlines. I will meet with parties and counsel whenever necessary to assist in resolving disputes as expeditiously as possible. I will use my case managers efficiently to assist me in keeping a close eye on all my cases. Having served as a magistrate judge, I am aware of the benefits of using a magistrate judge to assist in controlling and managing a court's docket. I will make full use of a magistrate judge, but I will oversee all aspects of my cases.

**13. 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 approach my cases from the “bottom-up” rather than from the “top-down.” That is, I do not approach cases with a fixed ideology or set of beliefs. Rather, I start with the facts and get a detailed understanding of the dispute and the parties before me. After I have a detailed understanding of the facts, I move to the governing law: any constitutional provisions, statutes, regulations, and/or case law. After I have an understanding of the applicable law, I apply the law to the facts of the case, fairly and impartially. Once I reach a decision, I communicate my decision to the parties in an accessible and understandable manner. It is my goal in every case that the litigants walk away from my courtroom, whether they have won or lost, with confidence that I listened carefully and gave fair consideration to their arguments.

**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.**

Response: No, not to the best of my knowledge and belief.

- 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 these questions on July 31, 2013, and prepared responses. On August 9, 2013, I sent my answers to an official within the Department of Justice. After receiving comments, I made revisions and then authorized the submission of my responses to the committee.

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

Response: Yes.

**Response of Landya B. McCafferty  
Nominee, U.S. District Judge for the District of New Hampshire,  
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: I approach my cases from the "bottom-up" rather than from the "top-down." That is, I do not approach cases with a fixed ideology or set of beliefs. Rather, I start with the facts and get a detailed understanding of the dispute and the parties before me. After I have a detailed understanding of the facts, I move to the governing law: any constitutional provisions, statutes, regulations, and/or case law. After I have an understanding of the applicable law, I apply the law to the facts of the case fairly and impartially. Once I reach a decision, I communicate my decision to the parties in an accessible and understandable manner. It is my goal in every case that the litigants walk away from my courtroom, whether they have won or lost, with confidence that I listened carefully and gave fair consideration to their arguments.

I am unaware of whether my philosophy is analogous to any justice of the Warren, Burger, or Rehnquist Courts, but expect that virtually all justices would agree that my approach is appropriate for a district court judge.

**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 recently employed original meaning originalism to interpret the Constitution in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) and *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a district court judge, I will follow the precedents of the Supreme Court and the Court of Appeals for the First Circuit with respect to the form of originalism to employ in interpreting the Constitution.

**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 as a district court judge, I would be duty-bound to apply the precedents of the Supreme Court and the Court of Appeals for the First Circuit; I could not (and would not attempt to) overrule them.

**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 *Garcia*, as I would any Supreme Court precedent, regardless of my personal views, if any.

**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 held in at least two cases, *United States v. Morrison*, 529 U.S. 598 (2000) and *United States v. Lopez*, 514 U.S. 549 (1995), that Congress lacked the authority under the Commerce Clause to regulate certain types of non-economic activity. I would abide by these precedents, and any other precedents of the Supreme Court and the Court of Appeals for the First Circuit, in construing the scope of Congress’s authority under the Commerce Clause.

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

Response: The judicially enforceable limits on the president’s ability to issue executive orders or to take executive actions can be found in the Supreme Court’s decision in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), specifically in Justice Jackson’s concurring opinion. In short, the President’s ability to issue an executive order “must stem either from an act of Congress or from the Constitution itself.” *Id.* at 585. If confirmed, I would apply the three-part *Youngstown* framework, and any other precedents of the Supreme Court and the Circuit Court of Appeals, to determine the scope of executive authority.

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

Response: The Supreme Court has held that rights are “fundamental” for purposes of the substantive due process doctrine where they are “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). If confirmed as a district court judge, I would apply the precedents of the Supreme Court and the Court of Appeals for the First Circuit regarding whether a right is “fundamental” for purposes of the substantive due process doctrine.

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

Response: The Supreme Court has held that a classification based on race, alienage, national origin or gender should receive heightened scrutiny under the Equal Protection Clause. *See, e.g., City of Cleburne v. Cleburne Living Ctr*, 473 U.S. 432, 440 (1985). If confirmed as a district court judge, I would apply the precedents of the Supreme Court and the Court of Appeals for the First Circuit regarding whether a classification should be subjected to 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 confirmed as a district court judge, I will be bound by the rulings of the Supreme Court and the Court of Appeals for the First Circuit regardless of my personal views or expectations concerning the use of racial preferences in public education.