

**Senator Grassley
Questions for the Record**

**Leigh Martin May,
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: Judges should have the highest level of integrity. This includes being fair and impartial, working hard to properly follow precedent, respecting all litigants, and running an efficient courtroom. I possess this attribute.

- 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: Judges should be patient, respectful, efficient, and prepared. I 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?**

Response: If confirmed, I will follow the precedents of the Supreme Court and the Eleventh Circuit. I have no personal beliefs that would impair my ability to do so. The personal opinions of a judge should have no impact on a judge's decision. I would follow this standard.

- 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 turn to the text of the applicable statute, regulation or document. If the text was unambiguous, that language would control. If the text was ambiguous, I would use the canons of construction established by the Supreme Court and the Eleventh Circuit to assist me in interpreting the text. I would also consider similar cases from the Supreme Court, the Eleventh Circuit and other federal courts 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 apply the Supreme Court and Eleventh Circuit precedent. My personal opinions would not influence my decision.

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

Response: Judges should only declare a statute enacted by Congress unconstitutional when the statute in question either exceeds Congress's authority or violates a provision of the Constitution. In making such a decision, a judge should presume the statute's constitutionality and defer addressing constitutional issues unless required.

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 would not rely on foreign law or the views of the world community in determining the meaning of the Constitution unless Supreme Court or Eleventh Circuit precedent required me to do so.

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 respect and will be bound by the separation of powers set out in the Constitution. It is not a judge's role to act on his or her own political ideology or motivation. Instead, a judge should remain true to his or her role—accurately applying precedent to the facts of a case.

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: If confirmed, I will decide each case on its merits and without regard to my personal views, if any. I will treat all parties with fairness and respect without regard to their class or standing. I will seriously discharge my duties as a federal district court judge with an understanding as to my proper role as a neutral decision maker.

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

Response: If confirmed, I will be a hands-on case manager. This would involve conducting status conferences as cases progress and using scheduling orders to keep cases moving forward. I would also take an active role in discovery, encouraging litigants to bring discovery issues to the Court by letter or telephone call when possible so that they can be resolved quickly. I plan to be available by telephone or conduct hearings when necessary to address issues as soon as practicable so that cases can proceed.

- 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. Please see the above answer.

- 12. 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?**

Response: A judge must decide matters with complete impartiality and without regard to his or her own personal views. I gained an understanding of this importance while I was a law clerk to a district court judge. If confirmed, I would apply the precedents of the Supreme Court and the Eleventh Circuit after consulting the briefing provided by the parties, considering properly admitted evidence, and conducting my own legal research. I believe the most difficult part of this transition will be getting up to speed on criminal law issues. I intend to work extremely hard to overcome my lack of experience in this area. I have already reviewed the Federal Rules of Criminal Procedure, the Federal Sentencing Guidelines and the Benchbook for U.S. District Court Judges to help prepare me for the transition.

- 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.”¹**

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

Response: Yes.

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

Response: It is my understanding that Justice Kennedy refers to same-sex marriages that are recognized as lawful 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?**

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

Response: Yes.

iv. Are you committed to upholding this precedent?

Response: Yes.

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. This portion and the entirety of the *Windsor* decision 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 will apply the entirety of the *Windsor* decision.

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. This portion and the entirety of the *Windsor* decision 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 will apply the entirety of the *Windsor* decision.

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

² *Id.* 2689-2690.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

- 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. This portion and the entirety of the *Windsor* decision 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 will apply the entirety of the *Windsor* decision.

- 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. This portion and the entirety of the *Windsor* decision 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 will apply the entirety of the *Windsor* decision.

- 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: Yes. After I applied for the district court in 2009, I contacted John Bowman with AAJ to inquire if he had any information as to how the Georgia selection process was proceeding. I contacted him again a year or so later to determine if he had any new

⁵ *Id.* (internal citations omitted).

information. To the best of my memory, I have not had contact with anyone at AAJ in regard to my nomination in several years.

- 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 and read these questions on May 20, 2014. On May 21, 2014, I prepared my answers to the questions and forwarded them to an attorney in the Office of Legal Policy of the Department of Justice for review. On May 27, 2014, I finalized my responses and authorized transmittal of the answers to the Committee.

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

Response: Yes.

**Senator Ted Cruz
Questions for the Record**

**Leigh Martin May, Nominee, United States District Judge
United States District Court 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: My judicial philosophy is to be fair, impartial, and accurately apply the precedent of the Supreme Court and Eleventh Circuit. Although I do not identify with a particular Supreme Court Justice’s judicial philosophy, if confirmed, I will apply the Supreme Court precedent from each of these Courts.

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: In *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), the Supreme Court held that the meaning of the Constitution at the time it was ratified was to be used to interpret the Constitution. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this issue and all other issues.

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, I would not overrule precedent. I would follow the precedent of the Supreme Court and the Eleventh Circuit.

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 v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), as well as other binding Supreme Court and Eleventh Circuit precedent that limit Congress’s power. Any personal opinion I may or may not have as to *Garcia* or any other Supreme Court precedent would have no role in my decision making.

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

Response: In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), and *United States v. Morrison*, 529 U.S. 598, 608-09 (2000), the Supreme Court provided a framework for evaluating Congress’s authority to enact legislation under the Commerce Clause. The Court emphasized the non-economic nature of the regulation when it invalidated the federal statutes in both cases. In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia’s concurrence stated that Congress may regulate non-economic activity that has a substantial relation to interstate commerce or when regulation is a necessary part of

a more general regulation on interstate commerce. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

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

Response: In *Medellin v. Texas*, 552 U.S. 491, 524-25 (2008), the Supreme Court explained the judicially enforced limits on the President’s ability to issue executive orders and executive actions. In doing so, the Court applied Justice Jackson’s concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), which provides a tripartite scheme for evaluating the authority for executive orders and actions. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that fundamental rights include “the specific freedoms protected by the Bill of Rights” and “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.” *Id.* (internal quotations and citations omitted). If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

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

Response: In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985), the Supreme Court explained the circumstances in which a classification should be subjected to heightened scrutiny. These circumstances include classifications by race, alienage, national origin, gender, and illegitimacy. In addition, “[s]imilar oversight by the courts is due when state laws impinge on personal rights protected by the Constitution.” *Id.* at 440. If confirmed, I will follow Supreme Court and Eleventh Circuit precedent on this and all other issues.

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, I would follow Supreme Court and Eleventh Circuit precedent on issues regarding racial preferences in public higher education and all other issues. Any personal opinion I may or may not have as to *Grutter* and all other Supreme Court precedent would have no role in my decision making.