

**Senator Grassley  
Questions for the Record**

**Beth Bloom,  
Nominee: U.S. District Judge for the Southern District of Florida**

- 1. During your hearing I asked you about *Miami Elevator Co. v. Marbrad*, a case where you were reversed for not recusing. In your hearing, you said you did not remember the case very clearly. You denied the motion, finding that it was “legally insufficient.” In its reversal, the Circuit Court relied on *Caleffe v. Vitale*. The appellate court held that you were “obliged” to ignore the technical deficiencies of the motion and had you done so, you should have recused.**
  - a. Please explain your rationale. Did you consider *Vitale* when you reached your decision?**

Response: In reaching my decision in *Miami Elevator v. Marbrad*, I did not consider *Caleffe v. Vitale*. I relied on Rule 2.160, Florida Rules of Judicial Administration. Subsection (c) entitled, *Disqualification of Trial Judges*, states:

(c) *Motion*. A motion to disqualify shall be in writing and specifically allege the facts and reasons relied on to show the grounds for disqualification and shall be sworn by the party by signing the motion under oath or by a separate affidavit. The attorney for the party shall also separately certify that the motion and the client’s statements are made in good faith.

- b. Do you agree that if the motion had been legally sufficient, you should have recused?**

Response: Yes.

- 2. You indicated in your questionnaire that you have been unable to find notes, transcripts, or recordings for several of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the talk you gave in March 1997 when you moderated the panel on the topic, “The Impact of Law Enforcement and the Judicial System on Community Relations”?**

Response: I was the moderator of this panel and, therefore, I did not have any specific points to cover. Instead, my function was to ensure that the panel was given an opportunity for brief remarks and to facilitate the question and answer session that followed. As I recall, the panel included a member of the Miami-Dade County Community Relations Board, a representative from the Miami-Dade Police Department and a member of the Eleventh Judicial Circuit’s Administrative Office of the Courts. While I believe other cases may have been discussed, the discussion centered on the high-profile case of *State of Florida v. McDuffie*. In that case, four officers were indicted for the manslaughter of

Arthur McDuffie. The panel discussion centered on the community's response to the riots and the protests in Miami, Florida, following the jury verdict and resulting acquittal of the officers.

- 3. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: No, I do not believe that a judge's gender, ethnicity, or other demographic factor should have any influence in the outcome of a case. Cases should be decided based on the law applied to the facts.

- 4. What is your understanding of the constitutionality of states to provide "conscience rights" to pharmacists and health care providers who refuse to facilitate abortions or fill prescriptions for contraceptives if they are personally opposed to such practices?**

Response: Although other federal circuits have addressed the issue, neither the Supreme Court nor the Eleventh Circuit Court of Appeals has decided this precise issue. As such, if faced with this issue, I would consider the parties' submissions, the analysis by other federal courts and all Supreme Court or Eleventh Circuit Court of Appeals precedent that may apply.

- 5. What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?**

Response: In *Walz v. Tax Commission of the City of New York*, 397 U.S. 664, 669 (1970), the Supreme Court stated that "there is room for play in the joints" between the First Amendment's Free Exercise Clause and the First Amendment's Establishment Clause. The Supreme Court has reinforced this principle in several subsequent opinions. The most recent opinion is *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005), in which the Supreme Court confirmed that "legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause" may constitutionally exist. If confirmed, I would apply *Walz*, *Cutter* and all other applicable Supreme Court and Eleventh Circuit Court of Appeals precedent.

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

Response: The most important attribute of a judge is integrity. Integrity includes approaching each case with an open and unbiased mind, a commitment to the rule of law and a diligent work ethic. I believe that I possess integrity and have demonstrated this attribute during my almost 20 years as a state court judge.

- 7. 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: A judge must be patient, even-tempered and attentive, treating all that come before the judge with the utmost dignity and respect. A judge must be eager to learn and possess humility. I consider each of these qualities of the appropriate judicial temperament to be essential and I believe that I meet this standard.

- 8. 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 as a United States District Court Judge, I will faithfully follow and apply the precedents of the Supreme Court and the Eleventh Circuit Court of Appeals regardless of whether I agree or disagree with those precedents. I have done this for almost 20 years as a trial court judge and will continue my commitment.

- 9. 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 this statement and the entirety of the majority opinion to be binding precedent and entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

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

Response: In *United States v. Windsor*, Justice Kennedy’s reference to “lawful marriages” are those “marriages that are made lawful by the State.” 133 S. Ct. 2675, 2695 (2013).

- iii. Is it your understanding that this holding and precedent is limited only to circumstances in which states have legalized or permitted same-sex marriage?**

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

Response: Yes. The Court's holding applies to §3 of the Defense of Marriage Act. *Id.* at 2679. This section amends the Dictionary Act in Title 1, §7 of the United States Code that provides a federal definition of "marriage" and "spouse." *Id.* The Supreme Court held that, as applied to states where same-sex marriage has been deemed lawful, the federal statute is unconstitutional as a deprivation of the equal liberty of persons that is protected by the Fifth Amendment.

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

Response: Yes. If confirmed, I will follow *Windsor* and any other relevant precedent from 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. This portion and all portions of the *Windsor* opinion are binding precedent to which a lower court judge should give full force and effect.

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

Response: Yes. I will commit to give this portion and all portions of the *Windsor* 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. This portion and all portions of the *Windsor* opinion are binding precedent and entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

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

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

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

Response: Yes. I will commit to give this portion and all portions of the *Windsor* opinion full force and effect.

**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. This portion and all portions of the *Windsor* opinion are binding precedent and entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court precedent.

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

Response: Yes. I will commit to give this portion and all portions of the *Windsor* 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. This portion and all portions of the *Windsor* opinion are binding precedent and entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court precedent.

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

Response: Yes. I will commit to give this portion and all portions of the *Windsor* opinion full force and effect.

**10. 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?**

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

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

Response: If there were no controlling precedent from the Supreme Court or the Eleventh Circuit Court of Appeals, then I would first thoroughly review the text of the provision, statute, rule or regulation in order to determine its plain and ordinary meaning. If the language is clear and unambiguous, I would apply the plain meaning to the facts of the case. If the language was ambiguous, I would look for guidance from the Supreme Court and the Eleventh Circuit Court of Appeals on issues that are analogous to the case at hand. If there were no such cases, I would turn to and consider other federal appellate court decisions on the subject for persuasive authority.

- 11. 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 am confirmed as a United States District Court Judge, my duty would be to follow and apply all precedent from the Supreme Court and the Eleventh Circuit Court of Appeals and my personal opinion would play no role.

- 12. 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. The statute should be declared unconstitutional when it is clear that Congress has exceeded its authority to enact the statute at issue or when the statute violates a provision of the Constitution.

- 13. 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. Neither foreign law nor the views of the “world community” are proper sources upon which a judge should rely for purposes of determining the meaning of the Constitution.

- 14. 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: As a state court judge for nearly 20 years, my decisions have remained grounded in precedent and the text of the law rather than any underlying political ideology or motivation. I will continue my commitment to the faithful application of precedent.

- 15. 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: As a state court judge for nearly 20 years, I have faithfully applied the law to the facts and have done so without regard to my personal views. I have approached each case

with an open and unbiased mind and have always treated all who appear before me with the utmost dignity, patience and respect. I will continue to demonstrate to each and every litigant that each will be treated equal under the law.

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

Response: If confirmed, I intend to use the case management techniques I have learned during my service as a state court judge. The Southern District of Florida utilizes a differentiated case management track system and I will ensure that early pretrial conferences and status conferences are held. I will establish meaningful and reasonable deadlines and I will work with the court personnel and the assigned magistrate judge to ensure timely resolution of pretrial motions. I will continue to work hard, issue rulings promptly and be accessible to the litigants.

**17. 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. Judges have an important role in controlling the pace and conduct of litigation. If confirmed as a United States District Court Judge, I would continue to ensure that meaningful and reasonable timelines are set and that I am accessible to all litigants so that discovery motions or unexpected issues are promptly addressed.

**18. 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: In reaching a decision in cases that come before me, I first begin with a thorough reading of the submissions, all of the cited legal authorities, and in some cases, additional legal authorities that appear to be relevant to the cases based on my own research. If there is oral argument, I come prepared and ask questions to narrow the issues of concern. I then consider the arguments and any additional authority, review my notes taken from the hearing, engage in additional research as necessary and apply the law to the facts of the case.

**19. 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”. You have indicated that you are a member of the AAJ.**

**a. Will you please explain your interest in and your work for the AAJ?**

Response: I was a member of the American Association for Justice (at the time it was known as the Association of Trial Lawyers of America) from 1991 until I became a state court judge in 1995. My work consisted solely of membership in the organization.

- b. 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 of the communications.**

Response: No.

- c. 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.

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

Response: On April 8, I received these questions from the Office of Legal Policy at the Department of Justice. I thoroughly reviewed the questions, conducted the necessary research, prepared my answers, and reviewed my answers with an attorney in the Office of Legal Policy. Thereafter, I made revisions and finalized my answers for submission to the Committee.

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

Response: Yes.



**Questions for the Record  
Senator Ted Cruz**

**Beth Bloom,  
Nominee: U.S. District Judge for the Southern District of Florida**

**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 as a state court judge for nearly 20 years has been to approach each case with an open and unbiased mind and to faithfully apply the law to the facts. I ensure that I listen patiently, rule promptly, explain my decisions clearly and treat all parties with the dignity and respect each deserves. I have not studied each Supreme Court Justice's judicial philosophy but, to the extent that any or all Justices share my beliefs set forth above, then our philosophies would be aligned.

**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 has used "original public meaning" when interpreting the Constitution in certain cases. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008). I would faithfully follow that precedent and all other precedents relating to constitutional interpretation.

**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 United States District Court Judge, there are no circumstances under which I would overrule precedent. I would faithfully follow controlling precedent from the Supreme Court and the Eleventh 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).**

Response: The *Garcia* case is binding precedent and if I am confirmed as a United States District Court Judge, I would apply that precedent and the precedent of all Supreme Court and Eleventh Circuit Court of Appeals cases fairly and impartially to the facts of each case.

**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 in *United States v. Lopez*, 514 U.S. 549, 558 (1995) has identified three general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of the channels of interstate commerce; (2) instrumentalities of interstate commerce and persons or things in interstate commerce; and (3) activities that substantially affect interstate commerce. In *United States v. Lopez, supra*, and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has also articulated limitations to the reach of the Commerce Clause to certain non-economic activity. If confirmed as a United States District Court Judge and presented with a challenge to a law on the grounds that it impermissibly extended to non-economic activity, I would apply controlling precedent.

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

Response: The power of the President to issue executive orders or executive actions must stem either from an act of Congress or from the Constitution itself. *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (internal citations omitted); *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). If confirmed, I would follow and apply precedent of the Supreme Court and the Eleventh Circuit Court of Appeals in deciding issues relating to the President's ability to issue executive orders or executive actions.

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

Response: The Supreme Court has stated that the "Due Process Clause protects 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 (1997) (internal citations and quotations omitted). If confirmed, I would follow and apply precedent of the Supreme Court and the Eleventh Circuit Court of Appeals in deciding issues concerning fundamental rights.

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

Response: The Supreme Court has ruled that "equal protection analysis requires strict scrutiny of a legislative classification when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Board of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). The Supreme Court in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985) has stated that strict scrutiny applies to classifications based on "race, alienage or national origin" or when "laws impinge on personal rights protected by the Constitution"; otherwise intermediate scrutiny applies to classifications based on gender and illegitimacy.

**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 United States District Court Judge, I will apply *Grutter v. Bollinger*, *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), and any other binding precedent in this area of the law. During my nearly 20 years as a state court judge, any personal views or expectations have been irrelevant to my decisions and they will continue to play no role. I will faithfully follow and apply the precedent of the Supreme Court and the Eleventh Circuit Court of Appeals.