

**Senator Grassley
Questions for the Record**

**Jorge Alonso,
Nominee, U.S. District Judge for the Northern District of Illinois**

- 1. In *People v. Barnes*, the Illinois appellate court reversed and remanded your dismissal of the defendant’s post-conviction petition. The appellate court wrote, “the trial court made a speculative attempt to reconstruct the jury’s deliberations and divine its unexpressed conclusions, the kind of speculation our supreme court expressly disapproved in *People v. Mack*.”**

- a. Can you respond to the Court’s critique?**

Response: A jury found Mr. Barnes guilty of first-degree murder, after a trial that was held before another judge, and this verdict was upheld on appeal. Mr. Barnes then sought post-conviction relief alleging ineffective assistance of appellate counsel because his appellate counsel on direct appeal had failed to argue that he had received ineffective assistance of trial counsel when his trial counsel failed to request a particular jury instruction. In my decision dismissing the petition for post-conviction relief, I concluded that Mr. Barnes received a fair trial based upon the evidence presented and that the Appellate Court would not have reversed the conviction even if appellate counsel had properly preserved the jury instruction issue. I fully accept the binding decision of the Appellate Court that, had the jury instruction been proffered, it was at least arguable that Barnes might have prevailed and that he, therefore, presented the gist of a claim of ineffective assistance of counsel, which is all he was required to do at the first stage of post-conviction review.

- b. Did your analysis consider the precedent in *People v. Mack*? If so, did you view that case as distinguishable? If not, why not?**

Response: Yes, I considered *People v. Mack* and I believed it to be distinguishable. However, I fully accept the binding decision of the Appellate Court.

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

Response: The most important attribute of a judge is impartiality. A judge must be open-minded and unbiased. I have been impartial in every case that I have presided over as a state court judge during the past 11 years.

- 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: A judge must strive to always be respectful, attentive and patient with every person who appears in the courtroom. I believe that each of these elements is equally important and I believe I have successfully exhibited these traits as a judge.

- 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: If I am confirmed, I will follow Supreme Court and Seventh Circuit precedent faithfully. My personal views have never and would never play a role in judicial decision-making.

- 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 resolving a case of first impression I would look first and foremost at the text of the constitutional provision, statute or regulation at issue. If the language was clear and unambiguous, I would go no further and I would simply apply its plain meaning. If the language was unclear or ambiguous, I would look to Supreme Court or Seventh Circuit precedent for guidance in cases with analogous or similar issues. If there were no helpful Supreme Court or Seventh Circuit cases, I would look to other federal circuit courts for persuasive authority.

- 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 views have never and will never be a consideration in matters of judicial decision-making. If confirmed, I would apply the binding decision.

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

Response: Federal statutes are presumed to be constitutional. The rules of statutory interpretation mandate that where a reasonable interpretation can be given to a statute to avoid declaring it unconstitutional, that interpretation should be employed. After applying these rules a court should declare a federal statute unconstitutional only when Congress has exceeded its authority under the Constitution or the statute violates a provision of 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.**

Response: I do not believe it is ever proper for judges to rely on foreign law, or the views of the “world community.” Courts should look to the text of the Constitution as well as Supreme Court and circuit court precedent in determining the meaning of the 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: As a state court judge for over 11 years, my rulings have always been based on precedent and the law. Political ideology or motivation have never been involved in my decision-making. If confirmed, I will impartially apply decisions of the Supreme Court and Seventh Circuit in all cases before me.

- 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: The best evidence is my record of service over the past 11 years as a state court trial judge. I believe I have developed a reputation for being fair and unbiased during my career. I have never permitted any personal views to come into play in judicial decision-making. If I am confirmed, I will continue to decide matters on the merits of each case.

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

Response: If confirmed, I would manage my caseload by employing the case management techniques that I have used during my career as a state court judge. I will ensure that early pre-trial conferences are held. I will set and enforce reasonable but firm deadlines and make sure that I am prepared to discuss cases when they are before me. I would rule on motions promptly so that cases can proceed to trial in a timely fashion. I would be sure to utilize all the resources available to me including case management software to keep cases and files organized so that I can successfully manage the caseload.

- 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: Yes. I strongly believe that the judge is responsible for controlling the pace and conduct of litigation in his/her courtroom. The judge must set the tone and establish an expectation that cases should progress efficiently and steadily toward resolution. If I am confirmed, I would ensure that meaningful timelines are set and enforced. I would also ensure that I am prepared to resolve motions promptly.

- 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: In reaching a decision in cases, I first carefully read any written motions or other submissions. I review any cited legal authority and conduct additional legal research. I then listen intently to arguments or evidence presented by counsel and witnesses, and fairly and impartially apply the facts of the case to the applicable law.

- 14. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: I am not aware of the full context of these comments by President Obama. I strongly believe that a judge should decide cases by faithfully applying the law to the facts. This is true regardless of how difficult the case is. It is never a judge’s role to decide cases based upon personal feelings or emotions.

- 15. 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. I do understand this statement to be binding precedent.

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

Response: My understanding is that the Court’s term “lawful marriages” refers to those marriages deemed lawful by individual states.

- 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?**

Response: Yes, that is my understanding.

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

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

Response: Yes, if confirmed, I will follow the Supreme Court's decision in *Windsor* and all other precedent from the Supreme Court and the Seventh 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."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.

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

Response: Yes. If I am confirmed, I would apply the *Windsor* decision and all other Supreme Court and Seventh Circuit 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**

- 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.

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

Response: Yes. If I am confirmed, I would apply the *Windsor* decision and all other Supreme Court and Seventh Circuit 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**

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.

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

Response: Yes. If I am confirmed, I would apply the *Windsor* decision and all other Supreme Court and Seventh Circuit 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.**

Response: Yes.

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

Response: Yes. If I am confirmed, I would apply the *Windsor* decision and all other Supreme Court and Seventh Circuit precedents.

16. **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.

⁵ *Id.* (internal citations omitted).

- 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.

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

Response: On September 16, 2014, I received these Questions for the Record from the Office of Legal Policy. I thoroughly reviewed the questions and prepared my answers. I provided a draft of my responses to the Justice Department. I subsequently finalized my responses and sent them back to the Justice Department for submission to the Committee.

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

Response: Yes.

Response of Jorge Luis Alonso
Nominee, United States District Court for the Northern District of Illinois
To the Written Questions for the Record by Senator Ted Cruz

- 1. 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 trial judge for the past 11 years has been to approach each matter before me with an open and unbiased mind, and to decide cases fairly and promptly by applying the law to the facts. Additionally, I ensure that I treat all persons who appear before me with courtesy and respect. I do not possess sufficient knowledge of the judicial philosophy of the justices who served on the Warren, Burger, or Rehnquist Courts to comment as to whose philosophy might be described as most analogous with mine.

- 2. 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 faithfully follow Seventh Circuit and Supreme Court precedent regarding methodologies for interpreting the Constitution. The Supreme Court has employed original public meaning to interpret the Constitution in cases including *District of Columbia v. Heller*, 554 U.S. 570 (2008).

- 3. 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, there are no circumstances under which I would overrule precedent. I would be bound by precedent of the Seventh Circuit and the Supreme Court.

- 4. 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 be bound to follow Supreme Court precedent without regard to my personal feelings, if any, on the issue. I would follow the Supreme Court’s holding in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985).

- 5. 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, I would apply the controlling precedent regarding questions of Congress' power under the Commerce Clause. My personal views, if any, would play no part in the decision making process.

The Supreme Court in *U.S. v. Lopez*, 514 U.S. 549 (1995) identified three categories of activity that Congress may regulate under its Commerce Clause power. These categories include: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. The Supreme Court has issued other decisions further defining the breadth of Congress' power under the Commerce Clause, particularly as it pertains to non-economic activity. See e.g., *Gonzales v. Raich*, 545 U.S. 1 (2005); *U.S. v. Morrison*, 529 U.S. 598 (2000). I would follow all Supreme Court and Seventh Circuit precedent regarding the extent of Congress' power under the Commerce Clause.

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

Response: The President's authority must stem from either the Constitution or an act of Congress. *Medellin v. Texas*, 552 U.S. 491, 525 (2008). The proper analysis, to determine whether the President's order or action is authorized, is contained in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (Jackson, J., concurring). If confirmed, I would follow the precedent of the Supreme Court and Seventh Circuit in deciding whether a challenged action or order is authorized.

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

Response: The Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) defined a right as "fundamental" for the purposes of substantive due process protection when it is, as an objective matter, "deeply rooted in the 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" (internal citations and quotations omitted).

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

Response: The Supreme Court has held that a classification should be subjected to heightened scrutiny when it differentiates based on certain characteristics such as race, alienage, national origin or gender. See *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Courts will also apply heightened scrutiny when a law impinges on a fundamental constitutional right.

- 9. 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 would follow the controlling precedent of the Supreme Court regarding the permissible use of racial preferences in public higher education including *Grutter v. Bollinger*, 539 U.S. 306 (2003), and *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013). I do not have an expectation as to whether the use of racial preferences in public higher education will be necessary 15 years from now.