

**Senator Grassley
Questions for the Record**

**Responses of Joan Marie Azrack
Nominee, U.S. District Judge for the Eastern District of New York**

- 1. Throughout your twenty plus year term as a magistrate judge, you have obviously had some of your decisions reversed. Can you share with the Committee some specific things you have learned through specific cases that will assist you as a district court judge, if confirmed?**

Response: During my 23-year tenure as a magistrate judge, I have done my best in every case to apply the governing law to the specific facts before me. When any decision of mine is reversed or not fully adopted, I closely scrutinize my decision and reflect on how the reviewing court's analysis and conclusions, as well as intervening changes in the law, may be relevant to future cases before me.

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

Response: I believe the most important attribute of a district judge is a commitment to the rule of law. The foundations underlying the rule of the law are fairness, impartiality, adherence to precedent, a focus on the specific facts before the court, and recognition of the limits of a district judge's authority under our Constitution and statutes. I believe that I have demonstrated a strong commitment to the rule of law throughout my 23-year tenure as a magistrate judge.

- 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: An appropriate judicial temperament is critical to ensure that all parties, irrespective of the outcome of their case, leave the courthouse confident in the fairness and impartiality of our judicial system. A judge must be patient and respectful of all litigants so that they have a full opportunity to be heard and know that the judge approached their case with an open mind and fully considered their position. I believe that I have demonstrated this temperament throughout my time as a magistrate 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: In my 23 years serving as a magistrate judge, I have faithfully followed all binding precedent, irrespective of any personal views. If confirmed, I will continue to do so.

- 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 an issue of first impression, I would first consider the text of the constitutional or statutory provision at issue. If the text was clear and unambiguous, I would apply the plain meaning of the text. If, however, ambiguity existed, I would employ canons and tools of statutory interpretation endorsed by the Supreme Court and the Second Circuit. I would also seek guidance from Supreme Court and Second Circuit precedent regarding analogous provisions, and persuasive authority from other circuits and district courts.

- 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: I would apply binding precedent, irrespective of any personal views.

- 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 only exception is if the statute exceeds congressional authority or violates a constitutional provision.

- 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.

- 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: My record as a magistrate judge is strong evidence that I have always grounded my decisions in precedent and the text of the law, irrespective of any political ideology or motivation. I will continue to uphold this commitment if I am confirmed as a district judge.

- 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: During my 23 years as a magistrate judge, I have treated all litigants with respect and impartiality, irrespective of any personal views. I will continue to uphold this standard if confirmed as a district judge.

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

Response: As a magistrate judge, I have experience managing a heavy caseload. I set firm, but reasonable, deadlines to ensure that cases proceed expeditiously to resolution. To monitor my cases, I hold status conferences and use the court's electronic case management tools. I strive to issue prompt rulings and I employ various methods to advance the cost-efficient disposition of cases, including encouraging and facilitating settlement. If confirmed, I will continue, where appropriate, to utilize these case management techniques and will work with magistrate judges to manage my docket.

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. Judges have a responsibility to control the pace and conduct of litigation. If confirmed, I will employ the case management techniques outlined in Question 11 above to control my docket.

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: Initially, I review the entire record, including all written submissions by the parties. I then research the applicable law, binding precedent from the Supreme Court and Second Circuit, and relevant persuasive authority. If I hold oral argument, I listen carefully and ask questions in order to fully understand the issues. When appropriate, I request additional submissions from the parties. After taking into consideration all submissions, argument, and applicable law, I try to issue prompt rulings that clearly and concisely explain the basis for my decision.

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 this statement; however, I believe a judge must always decide cases in an impartial and fair manner, and in accordance with binding precedent. A decision should be based on the application of facts to applicable law, irrespective of any personal views.

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.

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 when Justice Kennedy used the term “lawful marriages” he was referring to marriages that are deemed 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?

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.

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

Response: Yes. If confirmed, I will uphold all Supreme Court precedent, including *Windsor*.

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

² *Id.* 2689-2690.

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 confirmed, I will uphold all Supreme Court precedent, including *Windsor*.

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**

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 confirmed, I will uphold all Supreme Court precedent, including *Windsor*.

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.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

Response: Yes.

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

Response: Yes. If confirmed, I will uphold all Supreme Court precedent, including *Windsor*.

- 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.

- 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 November 20, 2014, I received Questions for the Record from the Office of Legal Policy. After thoroughly reviewing the questions and drafting my answers, I submitted my responses to the Office of Legal Policy for review and then finalized my responses before submitting them to the Committee.

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

Response: Yes.

Questions for the Record
Senator Ted Cruz

Responses of Joan Marie Azrack
Nominee, United States District Judge for the Eastern District of New York

- 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: During my 23-year tenure as a magistrate judge, I have approached each case with an open mind, treated all litigants fairly and impartially, and promptly decided disputes by applying controlling law to the specific facts before me. I do not have sufficient knowledge of the judicial philosophies of the justices on the Warren, Burger and Rehnquist Courts to compare their philosophies to my own.

- 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 and presented with a question of constitutional interpretation, I will follow controlling precedent and look to the original public meaning of the Constitution in accordance with such cases as *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, I will not overrule controlling precedent.

- 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 will follow all controlling precedent, including *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: In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court identified three categories of activities that Congress may regulate under the Commerce Clause, including activities that substantially affect interstate commerce. Under this framework, the Supreme Court has struck down statutes that regulated certain types of non-economic activity. *United States v. Morrison*, 529 U.S. 598 (2000); *Lopez*, 514 U.S. 549. If confirmed, I will follow this, and other controlling precedent.

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

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court held that the President’s ability to issue executive orders or take executive actions must be rooted in the Constitution or an act of Congress. If confirmed, I will follow that precedent.

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

Response: According to the Supreme Court, a right is “fundamental” for purposes of the substantive due process doctrine when it is “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) (internal quotations omitted). If confirmed, I will follow that precedent.

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

Response: The Supreme Court has held that certain classifications, such as those based on race, alienage, national origin, gender, and illegitimacy are subject to heightened scrutiny. See *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1995). If confirmed, I will follow that precedent.

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: I do not have any expectations about the future necessity of racial preferences in public higher education. If confirmed, I will follow controlling precedent on this issue, including *Grutter v. Bollinger*, 539 U.S. 306 (2003), and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).