

**Responses of Wendy Beetlestone,  
Nominee, United States District Court for the Eastern District of Pennsylvania  
To the Written Questions for the Record by Senator Chuck Grassley**

- 1. An important part of any district judge's work is presiding over criminal cases, and it does not appear that you have handled any criminal cases in your legal career. If confirmed, what steps will you take to familiarize yourself with criminal law before taking the bench?**

Response: Given that my background is primarily in complex federal civil litigation, I am well aware how important it is to familiarize myself with criminal law and procedure before taking the bench. I have begun to do so by, for example, reading materials supplied to me by the Federal Judicial Center, the U.S. Sentencing Guidelines, and other materials recommended to me by practicing attorneys. I plan to continue this reading in the upcoming months as well as to observe criminal proceedings. If I am confirmed, I would seek the advice and guidance of the sitting judges of the Eastern District of Pennsylvania bench particularly those who, like me, transitioned from a civil litigation practice.

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

Response: Impartiality, both in the sense of treating all parties fairly and even-handedly as well as a commitment to making decisions based on objective criteria relevant to the matter before the court, is the most important attribute of a judge. I believe I do possess this attribute and, should I be confirmed as a district judge, would use it as the touchstone for every decision I make.

- 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 most appropriate temperament for a judge involves the respectful treatment of litigants, attorneys, colleagues and court personnel; respect for process as shown by a commitment to ensuring the just, speedy, and inexpensive determination of every action and proceeding; respect for the law as illustrated by the impartial and faithful adherence to applicable law and precedent; and respect for the position of an Article III judge through judicial restraint, honesty and integrity. I believe I possess these attributes and, should I have the privilege of being confirmed, would act in accordance with them.

- 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 have the privilege of serving as a district judge, I would faithfully follow Supreme Court and Third Circuit precedent in any case or controversy that comes before me regardless of any personal views I may have about any particular decisions.

- 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 a matter of first impression, as in any case, I would first read and evaluate the plain language of the statutory provision at issue. *See, e.g., United States v. Trucking Assn's*, 310 U.S. 534, 543 (1940) (“There is . . . no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning.”). If the language was not clear, I would employ the relevant rules of statutory construction to determine its meaning. I would also review decisions of the Supreme Court and the Third Circuit as well as other persuasive authority interpreting analogous provisions. If the meaning of the words remained ambiguous, I would consider consulting legislative history.

- 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: If confirmed as a district judge I would apply binding precedent of the Supreme Court and the Third Circuit regardless of any personal views I may have concerning the merits of the decision.

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

Response: If I am confirmed as a district judge and presented with the question of whether a particular statute or statutory provision was unconstitutional, I would make my decision in accordance with Supreme Court and Third Circuit precedent using the following general principles: A statute enacted by Congress is presumed to be constitutional. Thus, if the statute can be reasonably interpreted to avoid finding it unconstitutional, this interpretation should be used. Only if a statute clearly exceeds congressional authority or violates a provision of the Constitution should it be declared unconstitutional.

- 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, unless Supreme Court or Third Circuit precedent require it. Absent such precedent it is not proper for a judge to rely on foreign law, or any views of the “world community” 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: During my career as a lawyer, I have advised and represented clients without regard to political motivation or ideology and, if confirmed as a district judge, would be unequivocally committed to making all my decisions along the same lines.

- 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 career as a lawyer, I have advised and represented clients without regard to any personal views I may have held. If confirmed as a district judge, I give my assurance that I would make all my decisions along the same lines and would be fully committed to fairness to all who appear before me.

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

Response: If confirmed as district judge I would manage my caseload with the goal of ensuring the just, speedy, and inexpensive determination of every matter and proceeding. I would take an active and ongoing role in case management using all the tools available to me including early evaluation of each matter, status conferences, as well as scheduling and discovery orders.

- 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 should be actively involved in case management and, in doing so, should seek the input of the litigants. However, I also believe judges have a responsibility to hold litigants to deadlines.

- 13. 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 context in which this statement was made. However, if I am confirmed as a district judge, my goal in every matter or proceeding before me would be for the litigants, regardless of the result, to walk away from the courtroom with the confidence that I listened carefully and gave fair consideration to their

arguments. To the extent that empathy (in the sense of being able to listen to and understand other people's positions) helps me manage the courtroom and achieve that goal, it has a role. However, I would never allow empathy (if defined as including an element of sympathy) to engender favor for one party over another. It is never the role of a judge to favor one party over another.

**14. 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.

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

Response: I understand the phrase "lawful marriages" to refer back to earlier portions of the paragraph which discuss "those persons who are joined in same-sex marriages made lawful by the state" and "those whom the State, by its marriage laws, sought to protect in personhood and dignity."

**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. If confirmed as a judge I would be committed to following all Supreme Court precedent.

**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**

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

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. The Court’s opinion is premised on its recognition of “the extent of the state power and authority over marriage as a matter of history and tradition” and the “virtually exclusive primacy . . . of the States in the regulation of domestic relations.”

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

Response: Yes. I am committed to giving the Court’s opinion in *Windsor* full force and effect just as I am committed to giving full force and effect to all Supreme Court decisions.

- 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.

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

Response: Yes. I am committed to giving the Court’s opinion in *Windsor* full force and effect just as I am committed to giving full force and effect to all Supreme Court decisions.

- 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>**

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

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

<sup>4</sup> *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 confirmed I would be committed to giving the Court’s 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.

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

Response: Yes, if confirmed I would be committed to giving the Court’s opinion full force and effect.

- 15. 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.

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<sup>5</sup> *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.

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

Response: Upon receiving the questions, I prepared the responses. I then discussed my responses with the Department of Justice, Office of Legal Policy. I then finalized my responses and authorized their transmittal to the Senate Judiciary Committee.

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

Response: Yes.

**Responses of Wendy Beetlestone,  
Nominee, United States District Court for the Eastern District of Pennsylvania  
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: If I am confirmed as a district judge, my judicial philosophy would be built on a foundation of impartiality. Each decision would be based on relevant Supreme Court and Third Circuit precedent as applied to the facts of the matter at hand. I am not sufficiently familiar with the body of work of each of the Supreme Court Justices referenced above to determine whose judicial philosophy is most analogous to what I have described.

**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: I am aware of the Supreme Court's use of originalism in *District of Columbia v. Heller*, 554 U.S. 570, 595, 605 (2008). If I am confirmed as a district judge, in interpreting a provision of the Constitution, I would follow *Heller* and all other applicable Supreme Court precedent.

**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 I were confirmed as a district judge, I would apply Supreme Court and Third Circuit precedent and have no authority to overrule such 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 I have the honor of being confirmed as a district judge, I would faithfully follow Supreme Court and Third Circuit precedent, including *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), in any case or controversy that comes before me regardless of any personal views I may have about those decisions.

**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 follow Supreme Court and Third Circuit precedent in deciding all matters before me. Accordingly, if presented with the question of Congress' power to regulate non-economic activity pursuant to the Commerce Clause in conjunction with the Necessary and Proper Clause I would look to Supreme Court case law that has evaluated whether Congress has the power to regulate non-economic activity



under the Commerce Clause. *See, e.g., Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995).

**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 power to issue orders or take executive action must stem either from an act of Congress or from the Constitution itself. *Id.* at 585. If I have the honor of becoming a district judge and am presented with an issue of the judicially enforceable limits on the President's ability to issue a particular executive order or take a particular executive action, I would follow controlling Supreme Court and Third Circuit precedent recognizing that any decision must rest "on the narrowest possible ground capable of deciding the case." *Dames & Moore v. Regan*, 453 U.S. 654, 660-61 (1981).

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

Response: Supreme Court precedents have held that a right is fundamental for the purposes of the substantive due process doctrine when it is deeply rooted in the nation's history and tradition and is implicit in the concept of ordered liberty. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702 (1997). If I have the honor of being confirmed as a district judge, I would follow this and all other Supreme Court precedents.

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

Response: If confirmed as a district judge, any decision I make in a matter before me concerning whether a classification should be subjected to heightened scrutiny would be premised on controlling Supreme Court and Third Circuit precedent as to whether it is a suspect classification or a classification that burdens a fundamental right. *See, e.g. City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985).

**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 decide any cases that may come before me concerning racial preferences in public higher education by reference to Supreme Court and Third Circuit precedent which includes, *inter alia*, *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), regardless of any personal views I may have.