

**Senator Grassley  
Questions for the Record**

**Allison Burroughs  
Nominee, U.S. District Judge for the District of Massachusetts**

- 1. I asked you one question about the death penalty in your hearing, but I would like to further understand your position on this issue. You have written and commented that seeking the death penalty in certain states, may not be worth the expense of prosecutorial resources that are required in a death penalty case.**

- a. Can you expand on and explain your view in this area?**

Response: First, I want to make clear that if I am fortunate enough to be confirmed as a district court judge, my decisions would be based on law and facts, not on any positions I took on behalf of clients and not on any statements I previously made or wrote. In February 2014, I authored an op-ed, which noted that “[a]ccording to a recent report by the Boston Bar Association, a single federal death penalty case in Philadelphia was found to cost upwards of \$10 million — an estimated eight times higher than the cost of trying a death eligible case where the prosecutors seek only life imprisonment” and then questioned whether seeking the death penalty is worth the time and resources when the likelihood that the penalty will be carried out is highly remote. I did not make any comments regarding the death penalty as a legal matter, and if confirmed, I pledge to faithfully apply all federal laws involving death-eligible crimes.

- b. What factors do you think should be taken into consideration when the government is deciding whether to pursue the death penalty in a case?**

Response: If confirmed as a judge, I would, of course, have no opinion on whether the government should pursue the death penalty in any given case. Based on my experience as an Assistant United States Attorney, I am aware that the Attorney General and Congress have issued guidelines for making these determinations as set forth in Title 18 U.S.C. §§ 3591 and 3592 and in the U.S. Attorney’s Manual at 9-10.140. The relevant factors include, but are not limited to, statutory and non statutory aggravating and mitigating factors, the strength of the evidence, the role of the defendant, the circumstances of the offense, the backgrounds and criminal records of the defendant and victim and the views of the victim’s family.

- 2. In 2010, you signed a letter that criticized the *Citizens United* decision. The letter stated that the decision “was not only wrongly decided but represents a serious danger to effective self-government of, for and by the American people.” It also called the decision a “radical and erroneous interpretation of the First Amendment.”**

- a. Do you stand by the statements made in that letter?**

Response: Although I signed the letter in 2010, I didn't author it and now regret its tone. *Citizens United* is binding precedent and I would apply it regardless of my personal views. I want to make clear that if I am fortunate enough to be confirmed as a district court judge, my decisions would be based on law and facts, and not on any position I took on behalf of clients or on any statements I previously made, wrote or joined.

- b. As a district judge, you would be required to follow Supreme Court precedent. If confirmed, would you be able to apply the Supreme Court's decision in *Citizens United* to a case before you?**

Response: Yes.

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

Response: I believe the most important attribute of a judge is the ability to fairly and impartially make a decision, based on law and applicable precedent, in a timely way. I further believe that I have this ability.

- 4. 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: I believe that a judge has to be open minded, fair and decisive. A judge also needs to be a good listener, smart, humble and willing to work hard enough to be the best prepared person in the courtroom. I also think it important that a judge treat all parties with respect and have the ability to make the parties feel that they have been heard and their views considered regardless of the outcome. I think that I meet that standard and, if confirmed, will work hard to continue to improve in the job.

- 5. 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 am fully committed to faithfully following Supreme Court and First Circuit precedents and giving them full force and effect regardless of whether I personally agree or disagree with such precedents.

- 6. 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, I would begin with the plain language of a statute in question. If the language was unclear or ambiguous, I would review any case law from the

Supreme Court and First Circuit addressing analogous issues for guidance and then case law from other circuits addressing the same issue for its persuasive value. Finally, if the issue was still unresolved, I would look to the legislative history of the applicable statute.

- 7. 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, I would apply binding precedent of the Supreme Court and the First Circuit regardless of my personal views.

- 8. 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 presumptively constitutional. “[R]espect for the decisions of a coordinate branch of Government demands [that federal courts] invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds.” *United States v. Morrison*, 529 U.S. 598, 607 (2000). If confirmed, I would apply this standard.

- 9. 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. If confirmed as a district judge, I would not rely on foreign law, or the views of the “world community,” in determining the meaning of the Constitution. I don’t believe that either of these is relevant to such a determination.

- 10. 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: If confirmed, I will be fully committed to grounding my decisions in precedent and the text of the law rather than any underlying political ideology or motivation. This is how I have practiced law during my career on behalf of the U.S. government and individual defendants.

- 11. 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: I am fully committed to putting aside any personal views that I might have and being fair to all who might appear before me. I believe that approaching cases in a fair and neutral way is critical to being a good judge under our system of law. During my career I have litigated effectively on behalf of both the U.S. government and individual defendants. I believe that this evidences an ability to put aside my personal views and to be fair when confronting a range of legal situations.

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

Response: If confirmed as a district judge, I would take a proactive approach to managing my caseload. I would, as an example, use the court's case management system and case management conferences to ensure that each case assigned to me has an efficient schedule in place, including a discovery schedule that focuses on the central issues of the case. I believe that justice delayed is justice denied and would make every effort to keep cases moving along consistent with the interests of justice and fairness.

**13. 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 district court judges have an important role in controlling the pace and conduct of litigation. If confirmed, as referenced above, I would use the court's case management system and case management conferences to ensure that each case has an efficient schedule in place. Such a schedule would maximize efficiency, promote the prompt disposition of cases and also help keep litigation costs proportionate to the case. I would also encourage mediation or arbitration where appropriate. I would try to limit continuances and would commit to resolving motions in a reasonable time frame. Although the primary role of a judge is to ensure that cases are decided fairly and impartially, it is also important that they be decided efficiently to resolve the dispute that caused the lawsuit, but also to try to minimize the other harms that can be caused simply by the pendency of the litigation.

**14. 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: I understand the difference between being a judge and being an advocate and welcome the opportunity to play a different role in the courtroom if I am fortunate enough to be confirmed. In all cases that come before me, I will reach a decision based on the applicable statutory authority and First Circuit and Supreme Court precedent. I will begin by considering the submissions and arguments of the parties, but will also do independent research into the applicable statutes and precedent to ensure a full understanding of the issues. Although a significant part of my practice over the past nine years has involved civil work, I believe that the most difficult part of the transition will be managing complex civil litigation in areas of the law that are outside my experience.

**15. 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 believe that cases should be decided impartially, based on applicable law and precedent.

**16. 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 to be part of the holding of the case.

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

Response: I understand him to be referring to marriages that are legal under the laws of the relevant state.

**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.”<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.**

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

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

Response: I understand this to be part of the analysis of the issue and part of the rationale for the holding.

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

Response: Yes.

- 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.

- 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.

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

Response: Yes.

- 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>**

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

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

<sup>5</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: I understand this to be part of the analysis of the issue and part of the rationale for the holding.

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

Response: Yes.

- 17. 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.

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

Response: I received the questions on September 24, 2014. I reviewed the questions and the cases referenced in the questions and then I drafted my responses. After some discussions with an attorney from the Department of Justice, I finalized my responses and requested that the Department of Justice submit them on my behalf to the Senate Judiciary Committee.

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

Response: Yes.



**Allison Dale Burroughs**

**Questions for the Record  
Senator Ted Cruz**

**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: I believe that decisions in a courtroom should be made based on a fair and neutral application of the law to the facts. I also believe that it is important that decisions be made in a timely manner and that litigants feel that their views have been heard and respected regardless of the outcome. To ensure this, judges must be open minded, willing to work in order to have a thorough understanding of the issues and committed to a process that is fair, faithful to the law and that reflects intellectual and ethical integrity. I am not sufficiently familiar with the philosophies of individual justices such that I am comfortable saying whose philosophy is most analogous with mine.

**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 (2008), the Supreme Court recognized that the public understanding of the Constitution at the time it was ratified was a relevant consideration when interpreting the Constitution. If confirmed, I will follow Supreme Court and First Circuit precedent on the issue.

**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 is no circumstance under which I would overrule precedent.

**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 obligated to follow *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) and other binding precedent regardless of whether I agreed or disagreed with it.

**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 has stated that Congress can regulate “the use of channels of interstate commerce,” the “instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities” and “activities that substantially affect interstate commerce.” See *United States v. Morrison*, 529 U.S. 598, 608-610 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed, I would follow this and all other relevant Supreme Court and First Circuit precedent.

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

Response: The President’s authority to issue executive orders or take executive action must come from an act of Congress or the Constitution itself. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would follow the controlling precedent on this issue.

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

Response: A right is fundamental when “‘deeply rooted in this nation’s history and traditions’, and ‘implicit in the concept of ordered liberty.’” See *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal citations omitted). If confirmed, I would follow the controlling precedent on this issue.

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

Response: A classification is subject to heightened scrutiny under the Equal Protection Clause when it burdens a fundamental right or works to the disadvantage of a suspect class. See, e.g., *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439-441 (1985). Classifications that are given strict scrutiny include those based on race, national origin and alienage. Gender and illegitimacy are given intermediate scrutiny. *Id.* If confirmed, I would follow controlling precedent regarding the application and interpretation of the Equal Protection Clause.

**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, my personal expectations regarding racial preferences in public higher education will play no role in my judicial decisions, and I will follow binding 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).