

**Senator Grassley
Questions for the Record**

**Robert John Colville
Nominee, U.S. District Judge for the Western District of Pennsylvania**

- 1. You have said possessing sensitivity is an essential trait in a good judge. Please elaborate and explain why this is and what it looks like for a judge to show sensitivity in the courtroom.**

Response: I do not recall the context of the statement you describe. I do, nonetheless, agree that "sensitivity" to the realities of litigants, witnesses, victims, and family members who are often bitterly embroiled in litigation is a necessary element of an appropriate temperament of a qualified judge who should extend respect, civility and courtesy to all. I do not believe, however, that "sensitivity" can ever properly influence a judge's legal rulings or judicial opinions in any respect.

- 2. You have limited criminal law experience throughout your career, both as a litigator and as a judge. What steps have you taken, or plan to take, to get up to speed on criminal law?**

Response: I have studied and familiarized myself with the Federal Rules of Criminal Procedure, the Federal Sentencing Guidelines, and the federal criminal code generally. I will participate in educational programs on federal criminal law through the Administrative Office of the United States Courts, and otherwise where available. I intend to study, "shadow," and regularly consult, judicial colleagues regarding the practice, procedure, and substance of federal criminal law. Of course, it is my personal responsibility to be fully equipped to capably perform all of my duties as a District Court judge and I am fully committed to doing any and all work necessary to ensure that I am.

- 3. In a judicial questionnaire you wrote that you “accept Roe v. Wade and the case law that follows it as settled law and binding legal precedent.” But considerable uncertainty remains in this area of law. For instance, do you believe that under the framework established by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) a court is constitutionally permitted to disregard the legislature’s stated purpose of promoting women’s health and instead conduct its own independent analysis of the medical merits of particular abortion-related regulations?**

Response: Pursuant to *Planned Parenthood v. Casey* courts are required to determine whether a challenged law regarding abortion "imposes an undue burden on a woman's ability to make this decision". *Planned Parenthood v. Casey*, 505 U.S. at 874. In the *Planned Parenthood v. Casey* case itself, the Court invalidated a spousal notification requirement of the challenged Pennsylvania abortion law, but it upheld other provisions of the law. I would faithfully abide by the precedent of the Supreme Court and the Third Circuit with respect to these issues.

4. **In 2014, you granted a request from a private citizen that the 19 cases he was a party to be removed from an online docket. This caused concerns that courts would be less open and accessible. Do you stand by your decision in 2014? If not, what would you have done differently?**

Response: The decision I made in the case referenced was rendered in response to an uncontested motion, with notice to all parties, and involved only the electronic docket, and not the official court docket. The decision was both within the discretion afforded the court and consistent with applicable law. Notwithstanding the legality and propriety of the ruling, I understand the general nature of the concerns subsequently raised, and I appreciate the importance of the transparency of the judicial system.

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

Response: Integrity. I believe that integrity is at the center of the promise of the judicial system. Integrity can best be demonstrated by an unqualified commitment to the rule of law, a respect for the principle of *stare decisis*, and a strict adherence to precedent. I believe that my record as a judge demonstrates that I possess integrity as a jurist.

6. **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: In my view the temperament of a judge reflects the judge's own level of respect for the judicial system and the rule of law generally. Patient, evenhanded, calm, courteous, attentive, and dispassionate consideration of the merits of each litigant's claims is required.

7. **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 District Court Judge I would be bound by precedent of the Supreme Court and the Third Circuit without qualification. I am fully committed, without reservation, to faithfully following the precedents of higher courts and to giving them full force and effect, regardless of whether I personally agree or disagree with such precedents.

8. **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: After ensuring that there was, indeed, no binding precedential authority, I would look first to the plain meaning of the relevant statute, rule, or document. If, however, the language at issue was genuinely ambiguous, I would apply the recognized rules of construction to the specific language. I would consider decisions of the Supreme Court and the Third Circuit respecting similar and analogous language. Next, guided by case law, I would look to the express language of the broader relevant authority or document and in the case of a statute any stated goals of the over-arching legislative scheme. I would consider the decisions of courts of other circuits addressing similar and analogous statutory language.

- 9. 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 the binding precedential authorities of the Supreme Court and the Third Circuit regardless of my personal views, without qualification.

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

Response: Acts of Congress are presumed constitutional. Only when necessary to resolve a justiciable case or controversy and after careful examination and upon conviction that, consistent with applicable precedential authority, a statute either impermissibly infringes upon a right granted by the Constitution or that a statute exceeds the authority granted Congress under the Constitution, should such a statute be declared unconstitutional.

- 11. 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: In interpreting and applying the Constitution, I would abide by all decisions of the Supreme Court and the Third Circuit. I am aware of no extant legal authority permitting the consideration of "foreign law" or "views of the 'world community'" in determining the meaning of the Constitution.

- 12. 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: I am, without qualification, committed to the rule of law, the principle of *stare decisis* and adherence to precedent. I will apply the precedent of the Supreme Court and the Third Circuit, without hesitation, and without regard to political ideology or motivation. I believe that my record as a state court judge for 16 years demonstrates this ability.

- 13. 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, without qualification, committed to the rule of law, the principle of *stare decisis* and adherence to precedent. I will apply the precedent of the Supreme Court and the Third Circuit, without hesitation, and without regard to any personal views I might hold. I believe that my record as a state court judge for 16 years demonstrates this ability.

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

Response: As a state trial court judge I am familiar with, and I am comfortable with, a substantial work/case load. I will work with judicial colleagues, court staff, and internal chambers staff to ensure that the work of the court is moved at an appropriate and professionally responsible pace. I fully accept my personal responsibility to diligently, efficiently, and effectively manage my caseload.

- 15. 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 believe a District Court Judge does have an important role in controlling the pace and conduct of litigation, in all cases, but particularly in criminal matters which involve speedy trial rights. Through thoughtful and reasonable use of a combination of case management conferences, scheduling orders, judicious assignments to Magistrate Judges, and regular internal-chambers case reviews, I am confident that I can ensure the appropriate and reasonable progress of my caseload.

- 16. 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: I ensure that I have a full and complete grasp of the facts of the case. I ensure that I have available all of the relevant statutory authority. I take time to study the available decisional law. I review all submission of the parties and conduct independent legal research when necessary. I entertain oral argument when requested and warranted. I then perform any necessary outstanding independent legal research in the context of a final review and consideration of all of the above.

- 17. 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 familiar with the context of the President's comments. I believe that the role of a judge is to apply the governing law to the facts of the case. If confirmed as a District Court Judge I will faithfully apply the precedent of the Supreme Court and the Third Circuit.

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

Response: I received these questions from the Office of Legal Policy at the Department of Justice on December 17, 2015. I reviewed the questions and personally prepared answers to them. I submitted my answers to the Office of Legal Policy for review and authorized their submission to the Senate Judiciary Committee.

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

Response: Yes.

Senator Jeff Sessions Questions for the Record Robert John Colville

Robert John Colville

Nominee, U.S. District Judge for the Western District of Pennsylvania

1. **A non-profit organization recently asked you the following question on a judicial candidate questionnaire: “Do you support judges verifying citizenship of each defendant and plaintiff in their court and turning illegals over to ICE or police/sheriff?” You responded: “No. Such routine inquiries can/should not be made in the absence of probable cause; but the law, immigration and otherwise, should be enforced when violations become known.” Do you still adhere to that view?**

Response: I do believe that the laws of the United States, including immigration laws, should be enforced. When violations become known, they should be reported to appropriate authorities for appropriate legal consequences. In all cases, I would faithfully abide by, and be guided by, the precedent of the Supreme Court and the Third Circuit with respect to these issues.

2. **In 2013, the Supreme Court of Pennsylvania decided *Robinson Township v. Commonwealth*, which involved constitutional challenges to a statewide land use standard for oil and gas development that overrode local zoning ordinances and limited fracking. You responded to a questionnaire from the League of Women’s Voters that asked whether you agreed with the plurality’s interpretation of Article I, Section 27 of the Pennsylvania Constitution, which was central to the results in that case. You answered:**

“I agree with the plurality decision as I understand it. (This reservation is of no small moment. As intimated in the Opinion, it remains to be seen how broadly, and in what specific factual contexts the holding will be applied over time). I agree that as a general proposition, in the absence of indications to the contrary, constitutional and legislative language should be afforded its plain meaning, in order to carry out the collective will of the people. The constitutional language of Article I, Section 27 plainly creates a trust protecting the environment for the benefit of future Pennsylvanians.”

- a. **Please expand on your basis for agreement with the plurality’s decision in *Robinson Township*.**

Response: As a plurality decision, the *Robinson Township* ruling of the Pennsylvania Supreme Court is limited in its binding authority to the specific claims asserted by the parties in that case alone, but its reasoning is entitled to due consideration as persuasive authority by lower courts. *Klopp v. Keystone Ins. Companies*, 378 Pa. Super. 605, 549 A.2d 221 (1988). As a trial court judge, I afforded it such consideration.

- b. **Under what circumstances should constitutional or legislative language not be afforded its plain meaning?**

Response: None, unless binding precedent dictates otherwise.

3. **You indicated in your submissions to this Committee that you “happily presid[ed] as judge at several same-sex weddings.”**

- a. **In your view, should churches or religious organizations that advocate for traditional marriage lose their tax-exempt status for “political activity” in the wake of the Supreme Court’s decision in *Obergefell v. Hodges*?**

Response: Respectfully, it is my understanding that this is a matter subject to pending litigation and/or potentially subject to impending litigation. As such it would be inappropriate for me to express a view as to the issues involved. I would like to assure the Committee that I would faithfully abide by the precedent of the Supreme Court and the Third Circuit if this issue came before me as a District Court Judge.

- b. **Do you believe that the First Amendment protects persons who, based on sincerely held religious beliefs, decline to provide a service, such as baking a cake for a same-sex marriage wedding ceremony, from being forced by law to do so?**

Response: Respectfully, it is my understanding that this is a matter subject to pending litigation and/or potentially subject to impending litigation. As such it would be inappropriate for me to express a view as to the issues involved. I would like to assure the Committee that I would faithfully abide by the precedent of the Supreme Court and the Third Circuit if this issue came before me as a District Court Judge.

Written Questions of Senator Jeff Flake
U.S. Senate Committee on the Judiciary
Judicial Nominations
December 15, 2015

Robert John Colville
Nominee, U.S. District Judge for the Western District of Pennsylvania

1. What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?

Response: I would, first, apply any binding precedential authority of the Supreme Court or the Third Circuit respecting the relevant statutory authority. In the absence of binding precedential authority, I would look to the plain meaning of the language of the statute. In my experience it is rare that further considerations are required. If, however, the language of the specific statute was genuinely ambiguous, I would apply the recognized rules of statutory construction to the specific statutory language. I would consider decisions of the Supreme Court and the Third Circuit respecting similar and analogous statutory language. Next, I would look to the express language of the broader relevant statutory authority and any stated goals of the over-arching legislative scheme. I would consider the decisions of courts of other circuits addressing similar and analogous statutory language. Finally, in the absence of any other guidance, I would rely on the Supreme Court and Third Circuit precedents concerning the use of legislative history in statutory interpretation.

2. What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?

Response: The Tenth Amendment explicitly states that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." I would apply the decisions of the Supreme Court and of the Third Circuit in any case that involves the 10th Amendment that came before me.

3. Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?

Response: Federal courts are courts of limited jurisdiction. As a result, extant legal authority related to standing is one of many doctrines relied on to determine which cases or controversies are properly justiciable in federal courts. As a District Court Judge, I would apply the applicable standing doctrine and follow the precedent of the Supreme Court and the Third Circuit in determining the same.

United States Senator Thom Tillis
Questions for the Record
Senate Judiciary Committee
On
Nominations

Robert John Colville
Nominee, U.S. District Judge for the Western District of Pennsylvania

Questions for All Nominees

- 1. One challenge you will face as a federal judge is managing a busy caseload. If confirmed, how will you balance competing priorities of judicial efficiency and due process to all litigants involved in the case?**

Response: As a state trial court judge I am familiar with, and I am comfortable with, a substantial work/case load. I will utilize training from the Administrative Office of the United States Courts. I will work with judicial colleagues, court staff, and internal chambers staff to ensure that the work of the court is moved at an appropriate and professionally responsible pace. I fully accept my personal responsibility to diligently, efficiently, and effectively manage my caseload.

- a. Will you give certain cases priority over others?**

Response: I do not intend to give any matter priority except as is necessary and required by, for example, the need to protect speedy trial rights in criminal matters.

- 2. What is a fundamental right?**

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court stated that: "we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' id., at 503 (plurality opinion); *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) ('so rooted in the traditions and conscience of our people as to be ranked as fundamental'), and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed,' *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937)." *Washington v. Glucksberg*, 521 U.S. at 720-721.

- a. From where are these rights derived?**

Response: Fundamental rights pursuant to constitutional analysis are derived, principally, from the Bill of Rights and the Due Process Clause of the 14th Amendment to the Constitution as recognized by the Supreme Court. *See, e.g., Washington v. Glucksberg*, 521 U.S. at 719-720.

3. What role, if any, should societal pressure or popular opinion play in interpreting legislation or the United States Constitution?

Response: Societal pressure or popular opinion should play no role in interpreting legislation or the United States Constitution.

Questions for Judge Robert John Colville

1. From a judicial candidate questionnaire you were asked: what is your opinion of a federal judge overturning PA's DOMA law in 2014? You answered, "Religious liberty must be respected and at the same time balanced against the rights of others. This is not always easy or simple." How is this balance best achieved?

As a District Court Judge I would faithfully abide by the precedent of the Supreme Court and the Third Circuit if issues involving the balance of religious liberties against the rights of others came before me. *See, e.g., Burwell v. Hobby Lobby*, 573 U.S. ____ (2014).

- 2. A number of states, including North Carolina, have passed or introduced laws to protect women's health. You have characterized *Roe v. Wade* and its progeny as settled law. Please address whether you consider the following settled law:**
- a. That a state can require a consultation with a physician or qualified professional at least 24 hours prior to an abortion procedure,**
 - b. That a state can forbid an abortion if a significant factor in the woman's decision is related to the gender of the unborn child,**
 - c. That a state can require abortion facilities to meet the same standards as ambulatory surgical centers, and**
 - d. That a state can require an ultrasound be made available to the woman before permitting an abortion.**

Response: It is my understanding that each of the scenarios described above is either presently a matter subject to pending litigation and/or potentially subject to impending litigation. As such it would be inappropriate for me to express a view as to the issues involved. I would like to assure the Committee that I would faithfully abide by the precedent of the Supreme Court and the Third Circuit if any of these issues came before me as a District Court Judge.