

**Responses of John W. deGravelles,
Nominee, United States District Court for the Middle District of Louisiana
To the Written Questions for the Record of Senator Chuck Grassley**

1. You have been critical of some court decisions in maritime law cases. For example, you said that the Supreme Court’s decision in *Lozman* created uncertainty and injected complexity into a settled question. You have also said that courts that do not allow punitive damages under the Jones Act are “wrong”.

a. The role of advocate is of course very different than that of judge. How are you preparing to make this transition?

Response: Although I was only a Baton Rouge City Court judge for several months, that brief experience helped me appreciate the differences between the role of an advocate and that of a judge. The advocate must advance his client’s position within the bounds of law and ethics. The judge’s role, however, is to listen objectively to all sides and apply the applicable law to the facts without bias or prejudice, and without regard to personal opinions. If confirmed, I would strictly apply the law as written and as interpreted by the Supreme Court and the Fifth Circuit without consideration of my personal views, opinions or beliefs. I am preparing to make this transition by reading the materials provided by the Federal Judicial Center including the *Bench Book for United States District Judges*, Sixth Edition. I also intend to attend seminars offered by the Administrative Office of the United States Courts.

b. What do you anticipate will be the hardest part of this transition?

Response: Although I have prior criminal law experience, I believe that the hardest part of the transition will be to become more proficient regarding criminal law and procedure. I have been getting up to speed and, if fortunate enough to be confirmed, I will accomplish this goal through continued hard work and dedication.

c. All the nominees who come before the committee assure me that they will follow precedent. But given your scholarly work that calls many cases “unfortunate,” I would like to hear a bit more explanation from you. What is your commitment to following precedent, even when you disagree with it?

Response: I understand and fully accept the fundamental difference between the roles of scholar and judge. The scholar’s role is to analyze the law critically with a view towards identifying weaknesses and advancing possible solutions. The role of a federal district judge, however, is to apply binding precedent and applicable law to the facts without bias or prejudice and without regard to his personal opinions. If confirmed, I would strictly apply the law as written and as interpreted

by the Supreme Court and the Fifth Circuit without consideration of any personal views, opinions or beliefs I may have.

2. **Throughout your career, you have been supportive of punitive damages and, as a general matter, plaintiffs being awarded as much in damages as they are able to obtain. After one case, you were interviewed about the amount of damages your client was awarded. You characterized the amount your client received to be within the “range of what’s fair.” I recognize that as a lawyer representing a plaintiff, your job is to get the best result that you could for your client. But as a judge, how will you determine what is within the range of fairness?**

Response: If confirmed, I will determine whether a punitive damages award is excessive by applying the factors set out in Supreme Court precedent such as *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) and *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

3. **In your questionnaire, you indicated that you spent the last five years of your practice doing both civil and criminal work. Yet, you also wrote that 0% of your practice has been in criminal law. Will you please clarify your answers to these questions?**

Response: I apologize to the Committee for this error. The first five years of my practice was general civil and criminal law and since then I have practiced almost exclusively in civil litigation. Therefore, over the course of my career, I would estimate that 97% of my practice was in civil law and 3% was in criminal law.

4. **In criminal matters, what do you view as the purpose of sentencing?**

Response: I believe that sentencing serves multiple purposes. It punishes the wrongdoer, protects the public, provides the victim with access to justice, deters wrongdoing, and effectuates the criminal laws within the framework of the Constitution.

5. **You’ve written about cases where a court rules in a particular way “in spite of the plain language of the rule”, like the Louisiana case of *Edwins*.**

- a. **Do you believe this case was decided correctly?**

Response: Although, as a scholar, I wrote that the Louisiana Supreme Court in *Edwins* reached the right result despite the plain language of the rule, my role as judge would be to strictly follow the plain language of any relevant statute. Further, I believe that the Court was justified in ruling that *Edwins* violated disciplinary rules against solicitation, improperly advanced funds to a client and negligently failed to account to his client for the disbursement of settlement proceeds and was therefore justified in issuing sanctions for these violations.

- b. **How will you approach plain language of the statute?**

Response: If confirmed and presented with a statutory question, I would start with the text of the statute. If the language of the statute is clear and unambiguous, the statute must be applied as written and no additional interpretation is required. If not, I would apply Supreme Court and Fifth Circuit precedent as to the meaning of a statute and, if necessary, apply the rules of statutory construction as approved by the Supreme Court and Fifth Circuit.

- 6. You spoke once about the Republican platform during the Bush/Quayle campaign as one that was against trial lawyers. Will you please explain what you meant by that comment?**

Response: I cannot recall what I was referring to in that statement I made in 1992 as President of the Louisiana Trial Lawyers Association although it may have been referring to President Bush's comments made during his acceptance speech at the Republican National Convention in which he said: "After all, my opponent's campaign is being backed by practically every trial lawyer that ever wore a tasseled loafer. He's not in the ring with them. He's in the tank."

- 7. In your questionnaire, you indicated that you testified before the Louisiana Legislature on the appointment of judges. Will you please elaborate on this statement? Did you testify on any particular judges? Or the judiciary in Louisiana generally?**

Response: In answer to question 12(c), I stated that during my year as President of the Louisiana Trial Lawyers Association (1992-1993), "I also may have testified on...the appointment of judges." I cannot recall if I testified on this issue, but if I did, my testimony would have been with respect to proposed legislation regarding the process by which judges would be selected. The testimony would not have had anything to do with a particular judge or the Louisiana judiciary.

- 8. What are some qualities or characteristics that you have seen in judges (state or federal) that you would hope to avoid, if confirmed?**

Response: The two main negative characteristics that I have seen in judges before whom I have practiced that I would hope to avoid are arrogance and lack of adequate preparation. Thankfully, there have been only a few instances in which I have seen these characteristics displayed.

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

Response: I believe that the most important attributes of a judge are the ability and determination to be open-minded, fair and absolutely impartial in his decision making, without any pre-conceived agenda, and to thoroughly research and apply the law to the facts. I possess these attributes.

- 10. 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 should be decisive but should act with humility and patience and should give all persons in his court respect, courtesy and dignity. I meet this standard.

- 11. 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 would faithfully and rigorously follow Supreme Court and Fifth Circuit precedents regardless of any personal view I might have of these precedents.

- 12. 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: It is my understanding that the Court is referring to same-sex marriages which a state has recognized as lawful.

- 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: I believe that the Court's ruling applies to the prohibition against federal recognition of same-sex marriages that a State has recognized as lawful as found in Section 3 of the Defense of Marriage Act.

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

iv. Are you committed to upholding this precedent?

Response: Yes. I am committed to upholding this and all other precedents of the Fifth Circuit and Supreme Court.

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. I consider this and all portions of the *Windsor* decision to be binding and entitled to full force and effect by lower courts.

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

Response: Yes. If I am confirmed, I will follow this and all portions of *Windsor* all other Supreme Court and Fifth 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. I consider this and all portions of the *Windsor* decision to be binding and entitled to full force and effect by lower courts

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

Response: Yes. If I am confirmed, I will follow this and all portions of *Windsor* and all other Supreme Court and Fifth 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

² *Id.* 2689-2690.

³ *Id.* 2691.

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. I consider this and all portions of the *Windsor* decision to be binding and entitled to full force and effect by lower courts.

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

Response: Yes. If I am confirmed, I will follow this and all portions of *Windsor* and all other Supreme Court and Fifth 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. I consider this and all portions of the *Windsor* decision to be binding and entitled to full force and effect by lower courts.

- ii. **Will you commit to give this portion of the Court's opinion full force and effect? If not, please explain.**

Response: Yes. If I am confirmed, I will follow this and all portions of *Windsor* and all other Supreme Court and Fifth Circuit precedents.

13. **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 would guide you, or what methods would you employ, in deciding cases of first impression?**

Response: In deciding cases of first impression I would look first to the language of the constitutional provision, statute or regulation which is at issue. If the language is clear and unambiguous, I would go no further and simply apply the provision as written. If the language was unclear, I would look to Supreme Court and Fifth Circuit precedent

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

interpreting similar or analogous provisions and, if necessary, would look to decisions from other circuits and district courts as persuasive authority.

- 14. What would you do if you believed the Supreme Court or 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 strictly apply the precedents of the Supreme Court and Fifth Circuit regardless of any personal beliefs I might have.

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

Response: Statutes enacted by Congress are presumed constitutional. Further, rules of statutory interpretation require that, if a reasonable interpretation can be given a statute so as to avoid declaring it unconstitutional, this is the interpretation which should be utilized. Thus, a district court should approach any constitutional challenge to an act of Congress with great care. If after applying these rules, the statute clearly exceeds congressional authority or violates a provision of the Constitution, then it would be appropriate to declare it unconstitutional.

- 16. 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.

- 17. 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: The rule of law requires that judges apply the law as written by Congress and interpreted by the higher courts, regardless of how the judge feels personally about it. Although I was only a Baton Rouge City Court judge for several months, that brief experience helped me appreciate the importance of that fundamental tenet of our system of justice. I am firmly committed to this essential tenet and can assure the Committee that I would decide all cases before me based on the application of binding precedent to the facts without regard to personal beliefs, political ideology or any other motivation.

- 18. What assurances 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 you are confirmed?**

Response: A judge’s personal opinions and beliefs should play no role in his decision making process. For the reasons stated in my answer to number 17 above, I can assure the members of the Committee and future litigants that, if confirmed, I will put aside any and

all personal views I may have and fairly decide each case only on the facts and applicable law.

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

Response: If confirmed, I would manage my caseload to accomplish the goal set by Federal Rule of Civil Procedure 1: a speedy, just and inexpensive resolution of the cases before me. I would utilize case management schedules which would allow the parties to develop their cases in a fair but efficient way. These schedules would set reasonable but firm deadlines for all aspects of the case including motions, discovery and trial. I would utilize magistrate judges to encourage and facilitate settlement discussions. I, along with my staff and magistrate judges would monitor the progress of the case and facilitate prompt resolution of pretrial matters. Where appropriate, I would dispose of matters in Rule 12(b)(6) motions and motions for summary judgment. I would create an internal calendar alert system for purposes of compliance with the Speedy Trial Act.

20. 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 do believe that judges have an important role in controlling the pace and conduct of litigation. I would take the steps described in my response to question number 19 above to accomplish this goal.

21. You have spent your entire career (minus a few months as a temporary judge) 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 will you look for guidance? What do you expect to be the most difficult part of the transition before you?

Response: I understand, appreciate and fully accept the fundamentally different roles of advocate and judge. A judge's role is not to advocate for any litigant or approach a case with any preconceived ideas or opinions. Rather, it is to listen to all the evidence fairly and impartially and apply the applicable statute and precedents of the higher courts to those facts. Although I have prior criminal law experience, I believe that the hardest part of the transition will be to become more proficient regarding criminal law and procedure. I have been getting up to speed and, if fortunate enough to be confirmed, I will accomplish this goal through continued hard work and dedication.

22. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated 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". You have indicated that you are a member of AAJ.

- 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: Yes. After I sent a letter to Senator Mary Landrieu on September 30, 2013 expressing my interest in the position, I spoke to AAJ staff members John Bowman and my daughter Kate deGravelles about the process involved in being nominated and confirmed. At some point between in the fall of 2013, I also spoke to AAJ President and friend Burton LeBlanc about my decision to apply for this position. I cannot recall the exact dates of those contacts. After I was recommended by Senator Landrieu and again after my nomination on March 13, 2014, various members and staff of AAJ contacted me to congratulate me. I cannot recall the dates of those communications.

- 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.

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

Response: I received these questions on May 27, 2014 and prepared my responses on May 27 and May 28, 2014. I submitted these responses to the Department of Justice Office of Legal Policy, for review. I then finalized the responses and authorized their transmittal to the Committee.

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

Response: Yes.

Response of John W. deGravelles
Nominee, United States District Court for the Middle District of Louisiana
To the Written Questions for the Record by Senator Ted Cruz

- 1. Describe how you would characterize your judicial philosophy, and identify which Supreme Court Justice’s philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: If I am confirmed, my judicial philosophy would be to work hard, listen carefully to all of the evidence, research the law thoroughly, and decide the case fairly and impartially based on the binding precedent of the Supreme Court and Fifth Circuit. I have not researched or studied the judicial philosophies of the justices of the Supreme Court but am confident that many share these characteristics.

- 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 adhere to precedent and the appropriate methodologies for interpreting the Constitution as set forth by the Supreme Court and the Fifth Circuit, including originalism. For instance, in *District of Columbia v. Heller*, 554 U.S. 570 (2008) the Supreme Court interpreted the Second Amendment based on the normal and ordinary meaning of the words of the Second Amendment as they were understood at the time of ratification.

- 3. If a decision were precedent today while you’re going through the confirmation process, under what circumstances would you overrule that precedent as a judge?**

Response: If confirmed, I would always apply and never overrule Supreme Court or Fifth Circuit 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 would be bound by and apply the Court’s *Garcia* decision as well as all other Supreme Court and Fifth Circuit decisions placing constitutional limitations on Congressional power.

- 5. 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 rendered a number of decisions defining the breadth and limitations of the Commerce Clause and, particularly, its scope and limitations as it pertains to non-economic activity. *See, e.g., Gonzales v. Raich*, 545 U.S. 1 (2005); *United*

States v. Morrison, 529 U.S. 598 (2000); and *United States v. Lopez*, 514 U.S. 549 (1995). If I am confirmed, I will apply these and all other Supreme Court and Fifth Circuit precedents 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 of executive actions?

Response: The President's authority to act must stem from either the Constitution or an act of Congress. *Medellin v. Texas*, 552 U.S. 491, 525 (2008). The Supreme Court has set out the proper judicial analysis which must be conducted in order to determine whether the President's executive order or executive action is authorized by the Constitution or an act of Congress. See, e.g., *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If I am confirmed, I will follow Supreme Court and Fifth Circuit precedent in deciding whether a challenged executive order is within that authority.

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

Response: The Supreme Court has stated that a right is "fundamental" for due process purposes when it is "objectively, deeply rooted in this Nation's history and tradition" and is "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it was] sacrificed," *Washington v. Gluckberg*, 521 U.S. 702, 720-721 (1997) (internal citations and quotations omitted). If confirmed, I would follow the precedent of the Supreme Court and Fifth Circuit in deciding whether a right is fundamental under the due process doctrine.

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

Response: When a law creates a "suspect classification" (e.g. one that is based upon race, religion, or national origin) or burdens a fundamental right, then the Equal Protection Clause requires that the classification be subjected to strict scrutiny. See, e.g., *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 339-441 (1985). If I am confirmed, I will follow Supreme Court and Fifth Circuit precedent to decide issues under the Equal Protection Clause.

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, one way or the other, in this regard. If confirmed, I will follow all Supreme Court and Fifth Circuit precedent on the use of racial preferences in public higher education, including *Grutter* and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).