

Questions for Judicial Nominees: Long and Short Versions

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What are some of the tough questions that we need to ask nominees for both the Supreme Court and the lower courts? Provided below is a lengthy questionnaire concerning nominees' positions on general philosophy as it relates to law, and their legal and constitutional philosophies – to law-relevant components of a “worldview model.” The questions here reflect assertions made by American court opinions, legislative measures, or credentialed legal scholars. They do not violate any constitutional limits on the scrutiny and qualifications of judicial nominees, such as the constitutional ban on religious tests for national office. Rather, these questions require nominees to be thoughtful and transparent concerning their worldview -their fundamental philosophical, jurisprudential, and constitutional values - values that the American people have a right to know from any official who judges them and their affairs.

These questions are covered in our “Constitution Blitz” and other works by Dr. Armstrong—see www.BlackstoneInstitute.org. Affirmative reactions to the following assertions, all actually made by a court or “legal expert,” reflect Reconstructionist positions.

[NOTE: This material is covered in other works by Dr. Armstrong – see www.eagleforum.org/court_watch; www.BlackstoneInstitute.org.]

Judicial Candidate Questionnaire *Questions for Judicial Nominees (And Candidates for Other Offices*)*

LONG JUDICIAL QUESTIONNAIRE

Questions with Brief Answers: “Agree/Disagree”

INSTRUCTIONS: Please respond to each item in the following manner: 1 = Agree; 0 = No Comment; 2 = Disagree

- 1) ___ “. . . the government creates civil marriage civil marriage is, and since pre-colonial days has been. . . a wholly secular institution.”
- 2) ___ “Without religion there can be no morality, and without morality there can be no law.”
- 3) ___ “Although creation science is educationally valuable and strictly scientific, it is now being censored from or misrepresented in the public schools.”
- 4) ___ “The word ‘person’ as used in the Fourteenth Amendment does not include the unborn.”
- 5) ___ “. . .this country’s founding documents support the idea that it is from the people, and not God, that the state draws its powers.”
- 6) ___ “The extent to which a government can be neutral and equally tolerant of all deeply

held values, including religious beliefs, has very definite limits. . . . Increasingly, government will be compelled to make choices between conflicting values, including religious values.”

- 7) ___ “. . . [Even] legislation that is largely symbolic and infrequently enforced . . . has significant pedagogical value. Laws teach people what they should and should not do”
- 8) ___ “The institution of rights against the Government is not a gift of God . . . [but] a complex and troublesome practice that makes the Government’s job . . . more difficult and more expensive.”
- 9) ___ “Marriage is a union of one man and one woman. No government has the authority to alter this definition.”
- 10) ___ “[Basing our law] on the history of Western civilization and . . . Judeo-Christian moral and ethical standards does not [but should] take account of other authorities pointing in an opposite direction [e.g., Irish and Canadian law and the European Court of Human Rights].”
- 11) ___ “[The Constitution] is made for people of fundamentally differing views”
- 12) ___ “. . . the word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn.”
- 13) ___ “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”
- 14) ___ “If lawyers hold to their precedents too closely, forgetful of the fundamental principles of truth and justice which they should serve, they may find the whole edifice comes tumbling around them.”
- 15) ___ “It is . . . clear that requiring schools to teach creation science with evolution does not advance academic freedom.”
- 16) ___ “. . . this Court is [not] vested with power to invalidate all state laws that it considers to be arbitrary, capricious, unreasonable, or oppressive . . . [or] unwise or unnecessary.”
- 17) ___ “The creationism-evolutionism controversy raises the fundamental issue of the nature of man.”
- 18) ___ “[The U. S. Supreme Court] owe[s] Congressional findings [upon ‘legislative’ questions] an additional measure of deference out of respect for its authority to exercise the legislative power.”
- 19) ___ “The ‘rule of law’ means that when courts resolve disputes, after all appeals and arguments, we all must obey the orders of those courts even when we disagree with those orders.”
- 20) ___ “The Constitution is to promote ‘the living development of constitutional justice’ and be interpreted to elaborate an idea of what is ‘human’ and ‘being’ and to forge ‘a new moral order.’”
- 21) ___ “[Government regulation of homosexual conduct] seems inexplicable by anything

but animus toward the class [homosexuals and lesbians] that it affects. . . .” “[Such regulation] is rooted in persistent prejudices against persons who are . . . homosexual.”

- 22) ___ “. . . the term ‘child who is in utero’ means a member of the species homo sapiens, at any state of development, who is carried in the womb.”
- 23) ___ “The absolute prohibition on any mention of God in our schools creates a bias *against* religion.”
- 24) ___ “[The Constitution] reflects a set of conflicting ideals and notions . . . [and] is an intentionally incomplete, often deliberately indeterminate structure for the participatory evolution of political ideals and governmental practices.”
- 25) ___ “[Basing our law] on ‘foreign views’ is ‘meaningless, dangerous dicta.’”
- 26) [The U. S. Supreme Court] should not . . . impose foreign moods, fads, or fashions on Americans.”
- 27) ___ “A state law requiring that both creationist and evolutionist theories of origins be taught is not inherently an ‘establishment of religion.’”
- 28) ___ “. . . we think that our laws and traditions in the past half century [rather than ‘the history of Western civilization’ and ‘Judeo-Christian moral and ethical standards’] are of most relevance here [in determining the constitutionality of state sodomy laws].”
- 29) ___ “[The Supreme Court is obligated to resolve] moral problems, not simply by looking backward to the sediment of old moralities, but ahead to emergent principles in terms of which fragments of a new moral order can be forged.”
- 30) ___ “No government has the authority to legalize any type of union (e.g., ‘civil unions’ or ‘domestic ‘partnerships’) other than traditional marriage.”
- 31) ___ “Requiring public schools to teach scientific evidences for creationism alongside scientific evidences for evolutionism may advance academic freedom.”
- 32) ___ “Values are necessary for the functioning of any society, and if they are not consciously adopted and publicly acknowledged, they will be smuggled in surreptitiously and often unconsciously. Values are always in real or potential conflict, and the state inevitably favors some values over others.”
- 33) ___ “It is possible for government officials to publicly acknowledge God without violating any Constitutional provisions.”
- 34) ___ “The Court’s opinion throwing out the Texas sodomy law] “is the product of a Court, which is the product of a law-profession culture, that has largely signed on to the so-called homosexual agenda . . .”
- 35) ___ “The creationism-evolutionism controversy raises the fundamental issue of the nature of man.”
- 36) ___ “A ‘person’ and a ‘human life’ are the same entity.”
- 37) ___ “Students’ freedom of thought and expression can be violated under some circumstances if the students are prohibited from making any visual or oral statements of their religious beliefs in public school settings.”

38) ____ “The ultimate precedent in American law is the U. S. Constitution.”

Open-Ended Questions

INSTRUCTIONS: Please answer each of the below questions to the best of your ability, including as much detail as possible regarding your philosophy, values, and opinions:

- 39) Can our Constitution survive if it is forced to govern a “people of fundamentally differing views”? Why or why not?
- 40) Is the judiciary intended to be the “weakest branch of government”? If not, what should be its relationship to the other two branches?
- 41) What are the most important “fundamental values” undergirding the Constitution today?
- 42) How do you define “human life”?
- 43) What does the Constitution mean when it uses the word “religion” in the First Amendment?
- 44) Can the unborn be a “life,” but not a “person”?
- 45) Are there problems with the Supreme Court’s being the agency described by legal scholars William Forrester and Arthur Miller in the following quotes? If so, what are some of the worst problems?

(1) William Ray Forrester, former Dean of Cornell Law School, has declared: “[The U.S. Supreme Court as an institution] is even more unique and unprecedented than commonly supposed. Indeed, the institution can no longer be described with any accuracy as a court, in the customary sense. Unlike a court, its primary function is not judicial but legislative. It is a governing body in the sense that it makes the basic policy decisions of the nation, selects among the competing values of our society, and administers and executes the directions it chooses in political, social and ethical matters. It has become the major societal agency for reform.”

(2) Arthur Miller, prominent law professor and TV commentator, penned the following: “The Justices [of the Supreme Court function] as a de facto Council of Elders [and] may be likened to the oracles of ancient Greece The Constitution is a theological document [A]nd the Justices are the High Priests who keep it current with each generation of Americans The Constitution is always in a state of becoming, always being updated to meet the exigencies faced by successive generations of the American people. Each generation writes its own Constitution.”

- 46) How do you define “precedent”? The “rule of precedent/stare decisis”? What qualities must a precedent possess to be of continuing validity in current law?
- 47) What is/are the source(s) to which an interpreter should refer in determining the

meanings of the U.S. Constitution's words and phrases?

- 48) Reconstructionists (i.e., liberals/activists) argue that America must have a "living Constitution, not one chained to a dead past." What does this mean? Do you agree? Why or why not?
- 49) What is the relationship between "precedent" and the Constitution?
- 50) Is the "separation of religion and law/politics" possible? Defend your answer.
- 51) When do you believe that human life begins? Would this belief affect your judgment in court cases where a legislative body has specifically defined the term "human life," and you personally agree or disagree with the definition?
- 52) Are the courts limited by the Constitution to the same degree and/or in the same way as the other two branches of the national government?
- 53) Do the Constitution's words have a fixed meaning? Please explain your answer.
- 54) What do you consider to be three legitimate reasons for impeaching, convicting, and removing a federal judge from the bench?
- 55) How do you prioritize the constitutional guarantees of "life, liberty, and law"?
- 56) Can/should Congress do anything about situations in which strong evidence indicates that judges have violated the rule of precedent?
- 57) What is/are the ultimate purpose(s) of the Constitution?
- 58) Is the three-tiered test applied by the Court in Equal Protection cases constitutional and usable? Why or why not? Are there other tests/standards that the Court could use in Equal Protection cases?
- 59) What role do the other branches of the national government have in interpreting the Constitution?
- 60) Please define "judicial restraint" and "judicial activism." How do these terms relate to the Constitution?
- 61) Define "person" as used in the Fifth and Fourteenth Amendments. Defend your definitions. Does the word "person" as used in the 14th Amendment include the unborn?
- 62) Do you believe that the Supreme Court has ever exceeded its constitutional authority? Has it exceeded its constitutional authority in the past seven decades? Please explain your answers.
- 63) What is the relationship of the U. S. Constitution to U.S. Supreme Court decisions?
- 64) Should constitutional protections for life and liberty ever be based on vacillating standards such as the "viability" standard? If so, under what circumstances?
- 65) How much power, if any, does the Congress have to regulate the courts?
- 66) What is/are the standard(s) for over-ruling precedent?
- 67) Please define in detail the concept of "justice" as used in the Constitution. From what source(s) do you derive your answer?
- 68) Which types of classification schemes (e.g., race, gender, etc.) in laws are the most

suspect? Which are the least suspect?

- 69) Is it possible to separate “legislation” and “morality”?
- 70) Please define in detail the concept of “liberty” as used in the Constitution. From what source(s) do you derive your answer? Are there any limits to the Constitution’s “liberty” guarantees? If so, what?
- 71) Please define in detail the concept of “equal protection of the laws” as used in the Constitution. From what source(s) do you derive your answer?
- 72) Is the “*Lemon* three-prong test” a constitutional and useful standard for the Court to employ in Establishment Clause cases? Why or why not? Are there other standards/tests that the Court could/should apply in adjudicating Establishment Clause claims?
- 73) Under current American court decisions, is there any limit to how “marriage” is defined? If so, what is/are the limit(s)?
- 74) Do current rulings in policy areas such as abortion, free exercise, establishment, homosexual rights/”marriage,” and “evolutionism only” impart certainty or chaos to law? Why or why not?
- 75) Do current rulings in policy areas such as abortion, free exercise, establishment, homosexual rights/””marriage,” and “evolutionism only” impart consistency or contradiction to American law? Why or why not?
- 76) Do current rulings in policy areas such as abortion, free exercise, establishment, homosexual rights/”marriage,” and “evolutionism only” impart continuity or convolution to American law? Why or why not?
- 77) May private business owners refuse to follow government mandates in sensitive areas such as abortion and homosexual rights on grounds of the owners religious beliefs? Why or why not?
- 78) Are transgendered persons a discrete class deserving special constitutional protections?
- 79) Is American really involved in a Culture War? Why or why not?
- 80) How would you prioritize these four cultural/constitutional values/guarantees: “personhood,” “liberty,” “rule of law,” “life”? Explain your answer.

*Many of the items contained in this questionnaire are applicable to non-judicial candidates because the Culture War has permeated all areas of American government and culture. Therefore, officials in all government branches and at all government levels are affected and should have to answer the items in the questionnaire which do not require specialized knowledge of the law. Judges, especially, however, functioning in the capacity described above by Dean Forrester have so metamorphosed in function and power as to become America’s ultimate governors. Therefore, they can no longer claim immunity from these questions as they could do when they were truly no more than “traditional courts.” Thus, Americans now have not only the right, but the responsibility, to ask of any potential judge these tough questions central to American culture and the Constitution.

SHORT JUDICIAL QUESTIONNAIRE

[NOTE: These questions are prepared by Virginia Armstrong, Ph.D., National Chairman, Eagle Forum's Court Watch; President, Blackstone Institute. This material is covered in other works by Dr. Armstrong – see www.eagleforum.org/court_watch; www.BlackstoneInstitute.org.]

- **Questions on General Philosophy:** “Nominee _____, do you agree:
 - that “the word ‘person’ as used in the 14th Amendment does not include the unborn”? (*Roe v. Wade*, 410 U.S. 113 [1973]).
 - that “the government creates civil marriage . . . [and civil marriage] is a wholly secular institution”? (*Goodridge and Others v. Department of Public Health and Another*, 798 N.E.2d 941 [2003]).
 - that “At the heart of liberty is the right to define one’s own concept of existence, of meaning, . . . and of the universe?” (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 [1992]).
- **Questions on Legal Philosophy:** “Nominee _____, do you agree:
 - that “it is from the [American] people, and not God, that the state draws its powers”? (*Glassroth v. Moore*, 229 F.Supp. 2d 1290 [2002]).
 - that basing our law on Western civilization and Judeo-Christian moral and ethical standards does not, but should, take account of foreign and international authorities? (*Lawrence v. Texas*, 156 L.Ed.2d 508 [2003], summary of majority point).
 - that “The basic problem of [Twentieth Century American Christians] in regard to society and . . . government, is that they have seen things in bits and pieces instead of totals. [But] nowhere have the divergent results of . . . the Judeo-Christian and the [H]umanistic [worldviews] been more open to observation than in [American] government and law.” (Francis Schaeffer, *A CHRISTIAN MANIFESTO*, 1981).
- **Questions on Constitution Philosophy:** “Nominee _____, do you agree:
 - that the Constitution is to promote “the living development of constitutional justice” and be interpreted to elaborate an idea of what is “human” and “being” and to forge “a new moral order”? (Tribe, *supra*) (Michael Perry, *THE COURTS, THE CONSTITUTION, AND HUMAN RIGHTS* [1982]).
 - that “[The Constitution] is made for a people of fundamentally differing views . . .”? (*Roe, supra*).
 - that “The Constitution reflects a set of conflicting ideals and notions . . . ” and “is an intentionally incomplete, often deliberately indeterminate structure for the participatory evolution of political ideals and governmental practices”? (Lawrence Tribe, *AMERICAN CONSTITUTIONAL LAW* [2d ed. 1988]).

*Judges, especially at the higher federal level, “no longer function as judges in the customary sense.” Rather, as Cornell Law Dean William Forrester declared in 1977, the Supreme Court has become “the governing body” of the nation.” Lower judges share some of this power to differing degrees. Therefore, judges can no longer claim immunity from these questions as they could do when they were truly no more than “traditional courts.” Thus, Americans now have not

only the right, but the responsibility, to ask of any potential judge, these tough questions central to American culture and the Constitution.

Conclusion

We American Constitutionalists who hold a high view of our Constitution, believing that it is, and must be, the Supreme Law of the Land must act. We are encouraged in this vital endeavor by one of America's most brilliant and articulate defenders of a limited judiciary—Justice Felix Frankfurter. Frankfurter wrote in 1941 that “Judges as persons, or courts as institutions . . . are entitled to no greater immunity from criticism [or questioning] than other persons or institutions Judges must be kept mindful of their limitations and their ultimate public responsibility *by a vigorous stream of criticism [or questioning] expressed with candor however blunt* (italics added)” (*Bridges v. California*, 314 U.S. 252, 289-290).

[NOTE: This material was originally presented orally to the national Eagle Forum's annual leaders roundtable in St. Louis, Jan. 27-28, 2007. Eagle Founder and President Phyllis Schlafly urges all concerned Americans to utilize this questionnaire and distribute it as widely as possible.]

NEWS UPDATE: Eagle Forum's Court Watch is receiving a major boost in its worldwide outreach. The Library of Congress has asked for permission to archive material from the Court Watch Web site. The LOC will monitor the CW Web site in the future so that CW will have an ongoing contribution to "researchers on site at Library facilities" as well as "researchers across the world through the LOC's Web site" (quotes from LOC message). Court Watch materials will be housed in the U. S. Supreme Court collection at the Library. "Court Watch is most grateful for this extraordinary opportunity to provide top-quality education and scholarship on a broader scope than before and are excited about this expansion in our outreach," declared Dr. Virginia Armstrong, National Court Watch Chairman.