

**Senator Grassley
Questions for the Record**

**Rosemary Marquez,
Nominee: U.S. District Judge for the District of Arizona**

- 1. In your hearing, you said that it was important to you that the parties walk away “feeling that they were respected in the courtroom and that their views were respected and that they were heard.” What role should empathy play in a judge’s decision making process?**

Response: It would be my goal in every case that the litigants would walk away from the courtroom with the confidence that I listened carefully and gave fair consideration to their arguments. However, a judge should never allow empathy (if defined as sympathy) to engender favor for one party over another. Empathy should not play a role in a judge’s decision making process.

- 2. You have worked in criminal defense. How will you transition from being an advocate for defendants to an impartial judge in criminal matters?**

Response: Although the majority of my criminal work has been in the area of defense, I have also worked as a prosecutor. I do understand that the role of a judge is different from the role of an advocate, whether in the defense or prosecution of a case. In addition to my advocacy role, I have also served as a Merits System Commission Hearing Officer. In that capacity, I was a neutral arbiter and made fair and impartial decisions based only on the application of the law to the facts of the case. I found that although the role of a judge is different from the role of an advocate, the respect for the law as written and its impartial application were the same. I believe this experience has given me valuable preparation for the work of being a judge, and if confirmed, I commit that I would approach every case from a neutral position and apply the law to the facts in a fair and impartial manner.

- 3. How will you use the Sentencing Guidelines in your decision making process?**

Response: Although the Sentencing Guidelines are now advisory, I believe uniformity in sentencing is critical to our criminal justice system. Therefore, I would use them as the starting point in my sentencing decisions and give them substantial deference.

- 4. What is your understanding of when federal law requires individuals before you to be deported?**

Response: The Department of Justice, through the Executive Office of Immigration Review, makes deportation determinations pursuant to 8 U.S.C. §1227.

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

Response: The most important attribute of a judge is the ability to apply the law fairly and impartially to the facts of each case while exercising judicial restraint in deciding only those issues before the court. I believe I possess this attribute.

- 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: The appropriate temperament of a judge is marked by respect. A judge should treat all who appear in court with dignity and respect. A judge should ensure that all litigants have a full and fair opportunity to be heard. A judge should demonstrate respect for each case by being prepared. A judge should have respect for the impartial application of the law. I believe these are the most important elements of judicial temperament, and that I meet this standard.

- 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: The doctrine of *stare decisis* is fundamental to American jurisprudence. Court precedents and the legal analysis contained in them give the public notice and provide predictability and consistency. If confirmed, I would follow the precedents of higher courts faithfully and give them full force and effect regardless of whether I agreed or disagreed with those 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: If faced with a case of first impression, I would utilize the standard rules of statutory construction, beginning with the examination of the statute's plain language and its application. If the plain language is ambiguous, I would seek guidance from Supreme Court and Ninth Circuit precedent from related contexts in order to reach a decision. Where appropriate, I would consider non-binding, but persuasive decisions, from other United States Courts of Appeals or other United States District Courts.

- 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 binding United States Supreme Court or Ninth Circuit Court of Appeals precedent regardless of whether I believe the court erred in its decision.

10. 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 presumed constitutional. A court should declare a statute enacted by Congress to be unconstitutional only where the statute violates an express provision of the United States Constitution or where Congress clearly has exceeded its authority to act under the United States Constitution.

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: No. I am not aware of any instance in which I would be required to consider foreign law in interpreting 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: The rule of law depends on judges making decisions based on facts and precedent, not political ideology. I have never allowed any personal views I may hold to interfere with my advocacy on behalf of my clients. My primary strengths as an advocate have been my ability to think objectively about the law and my consistent respect for other parties and their arguments. If confirmed, I would never consider ideology in applying the law to the facts of the case before me.

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 have represented clients from different backgrounds with different views and opinions and I have zealously advocated for each of them without regard to my personal beliefs. If confirmed, the principle that the Constitution and the law apply to the facts of each case without bias or prejudice will guide me in every decision I make.

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

Response: If confirmed, my policy would be to schedule case management conferences, work with counsel to develop efficient case management schedules and to monitor cases throughout the process to ensure the case is not unnecessarily delayed.

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, judges play an important role in controlling the pace and conduct of litigation. If confirmed, I will follow the steps I outlined in my response to question 14 and strive to resolve matters fairly, promptly and efficiently.

- 16. 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: If confirmed, I will resolve legal issues by looking to relevant constitutional or statutory provisions and apply relevant Supreme Court and Ninth Circuit Court of Appeals precedent. If the case is in an area of law where I do not have familiarity, I will work diligently to read and learn all relevant law. I will also consult with other judges with experience in that area of the law. Although there will be a learning curve in some areas such as bankruptcy and patent infringement cases, I am confident I will be able to make this transition.

- 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 these questions on February 4, 2014. I drafted my responses to the questions and reviewed my responses with Justice Department officials. I authorized the Justice Department to submit my responses on my behalf.

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

Response: Yes.

Questions for the Record
Senator Ted Cruz

Responses of Rosemary Marquez
Nominee, U.S. District Judge for the District of Arizona

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

Response: If confirmed, my judicial philosophy would be to treat all who enter the courthouse with courtesy and respect and to apply the law to the facts of each case fairly and impartially. I would respect precedent, and limit rulings to resolve only those issues properly before me. I have not studied in significant depth the Justices’ judicial philosophies, so I am not able to say whose philosophy is most analogous to 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: The United States Supreme Court has used originalism to interpret constitutional provisions. One example of a binding decision where the Supreme Court has interpreted the Constitution using original public meaning is *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a federal district judge, I would apply all relevant precedents when deciding cases, including the United States Supreme Court’s precedents that rely on original public meaning and those that rely on original intent.

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: There are no circumstances under which I would overrule the precedents of the United States Supreme Court or the United States Court of Appeals for the Ninth Circuit if I were confirmed as a federal district judge.

Explain whether you agree that “State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power.” *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If I were confirmed as a federal district judge, I would apply *Garcia* and all other binding precedents of the United States Supreme Court regardless of my personal views, if any.

Do you believe that Congress’ Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court has, “identified three broad categories of activity that Congress may regulate under its commerce power.” *United States v. Lopez*, 514 U.S. 549,

558 (1995). According to *Lopez*, the federal government first “may regulate the use of the channels of interstate commerce,” second “may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce” and third may “regulate those activities having a substantial relation to interstate commerce.” *Id.* at 558-59. The Supreme Court highlighted the non-economic nature of the activity being regulated in both, *Lopez* and *United States v. Morrison*, 529 U.S. 598 (2000), when it struck down the statute at issue in those cases. If confirmed, I would follow the binding precedent of the United States Supreme Court.

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 and take executive actions is limited by the Constitution and federal statutes. “The President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). Therefore, the judicially enforceable limits on the President’s ability to issue executive orders or executive actions apply to those instances when the order or action is not authorized by Congress or the Constitution.

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

Response: The United States Supreme Court has held that a right is “fundamental” for purposes of the substantive due process doctrine where “deeply rooted in this nation’s history and tradition,” and “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted). If confirmed as a federal district judge, I would follow all binding precedents of the United States Supreme Court and the Ninth Circuit Court of Appeals, including precedents regarding whether a right is “fundamental” for purposes of the substantive due process doctrine.

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

Response: According to Supreme Court precedent, a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it differentiates based on race, alienage, national origin, gender or illegitimacy. The Supreme Court has also explained that heightened scrutiny should be applied when a classification burdens a right the Court has identified as fundamental.

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, I would abide by *Grutter* and *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013), and all other Supreme Court precedents regardless of any personal views or expectations.