

Senator Chuck Grassley
Questions for the Record
Robert Mariani, U.S. District Judge for the Middle District of Pennsylvania

- 1. A number of federal statutes, particularly employment statutes, create statutory duties but do not explicitly call for private causes of action. What approach would you take when deciding whether to interpret a statute so as to create an implicit private cause of action?**

Response: I would follow the precedents of the United States Supreme Court and the Third Circuit Court of Appeals to determine if Congress has expressed its intent to create a private right of action to enforce federal law. The intent of Congress to create a private cause of action is the central inquiry. I would examine the text and structure of the statute to determine if Congress has expressed its intent to create a private cause of action. In the absence of the expression by Congress of an intent to create a private cause of action, I would find that no such private cause of action exists.

- 2. What is the proper role of the courts when (a) reviewing agency rulemaking, or when (b) reviewing agency enforcement actions based upon agency interpretations of rules?**

Response: The proper role of the courts when reviewing agency rulemaking has been determined by the Supreme Court of the United States in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., et al.*, 467 U.S. 837 (1984), to require a court which reviews an agency's construction of the statute to address two questions. First is the question whether Congress has spoken directly to the precise question at issue. If the intent of Congress is clear, the agency and the court must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, and the statute is silent or ambiguous with respect to that issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. *Chevron, supra*, 467 U.S. 842-843. Supreme Court precedent requires that this two-part analysis be applied. See, e.g., *Mayo Foundation For Medical Education and Research, et al. v. United States*, 131 S.Ct. 704 (2011).

With respect to reviewing agency enforcement actions based upon agency interpretations of rules, Section 706 of the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*, sets forth the judicial authority to review and set aside agency action. See, e.g., *FCC v. Fox TV Stations, Inc.*, 129 S.Ct. 1800 (2009).

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

Response: Integrity, which necessarily includes impartiality, fairness and commitment to the rule of law. I believe I possess these attributes.

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: The appropriate temperament of a judge requires that the judge be fair, impartial, patient, diligent, courteous and respectful to counsel and all persons who come before the court. The most important elements of appropriate judicial temperament are, in my view, the ability to be fair and impartial; to treat all who come into court, whether as litigants, witnesses, lawyers, jurors or court personnel, with respect; and to demonstrate genuine humility and to at all times be mindful of the judge's obligation to preserve the integrity of the judicial process. I respectfully believe that I meet that standard.

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. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded 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 case where there is no controlling precedent from the United States Supreme Court or the United States Court of Appeals for the Third Circuit that dispositively concludes an issue with which I am presented, I would review the opinions of the other circuit courts of appeals for guiding authority. If the issue to be resolved arose from the application or interpretation of a statute, I would give the words of the statute their plain and ordinary meaning. If the statute itself were ambiguous, I would attempt to aid my construction of the statute by review of legislative history, intent and purpose. I would also attempt to resolve the issue by reasoning from well settled general principles of law as set forth in United States Supreme Court precedent or Third Circuit precedent, which, though not dispositive, provide analytical direction by which to resolve the issue. In all cases, I would resolve the issue on the narrowest ground possible.

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 own judgment of the merits, or your best judgment of the merits?**

Response: If I believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision, I would nonetheless apply that decision faithfully. As a district court judge, I would be duty bound to follow the law as set forth by the United

States Supreme Court and the United States Court of Appeals for the Third Circuit. I would apply the decision and would not use my own judgment of the merits or my best judgment of the merits since my personal beliefs would be irrelevant to the judicial decision-making process.

8. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I would manage my caseload by applying the Local Rules of the District Court for the Middle District of Pennsylvania to require the joint preparation by counsel of the Joint Case Management Plan at the commencement of the litigation and to require periodic updates of the Plan to ensure that the case progresses in a prompt and orderly fashion without unnecessary or unreasonable delay. I intend to make myself available for resolution of discovery disputes and I would promptly resolve all pre-trial motions, including dispositive motions such as those brought pursuant to Federal Rule of Civil Procedure 56. I would hold pre-trial conferences for the purpose of expediting trial and identifying the issues that are genuinely in dispute so as to avoid unnecessary protraction of the matter. I would encourage mediation and alternative dispute resolution where, as a result of discussion with both counsel, the matters at issue appear to be susceptible of resolution through those processes.

9. **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 a role in controlling the pace and conduct of litigation and, if confirmed, I would work with counsel to set firm and reasonable deadlines for motions and pre-trial discovery. With respect to cases assigned to me, I would monitor the process of each such matter and make regular inquiry with counsel to ensure compliance with the Case Management Plan. In addition, please refer to my response to Question No. 8.

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

Response: I received these written questions on Thursday evening, June 30, 2011. I reviewed the questions carefully and prepared my responses. I then reviewed my responses with a representative of the Department of Justice. After finalizing my responses, I forwarded them to the Department of Justice for transmittal to the Senate Judiciary Committee on my behalf.

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

Response: Yes.