Senator Grassley
Questions for the Record

Ronnie Lee White,
Nominee, U.S. District Judge for the Eastern District of Missouri

1. **In 2003, you joined the majority opinion in *Simmons v. Roper*, a case in which the Missouri Supreme Court held that the 8th Amendment prohibited the execution of individuals who committed a capital crime when they were under 18 years of age. At the time you joined the majority, there was directly controlling US Supreme Court precedent on that issue, the *Stanford v. Kentucky* case. *Stanford* held that there was no national consensus regarding the execution of 17 and 18 year olds and was still good law when your court decided *Roper* in 2003. Since deciding *Stanford* in 1989, the US Supreme Court had repeatedly reaffirmed its holding – twice in 2002 and again in 2003, the same year you joined the majority in *Roper*.**

   a. **Can you explain your rationale for joining the Missouri Supreme Court majority in *Roper* even though *Stanford* was binding precedent and contradicted the holding of the Missouri court at that time?**

      Response: In *Stanford v. Kentucky,* 492 U.S. 361 (1989), the Supreme Court held that there was not then a national consensus against the execution of those who were 16 or 17 years old at the time of their crimes and declined to bar such executions. On that same day, the Supreme Court held that there was not then a national consensus to bar the execution of those who were mentally retarded. *Penry v. Lynaugh,* 492 U.S. 302 (1989).

      In 2002, the year before we heard Simmons' petition for writ of habeas corpus, the Supreme Court decided *Atkins v. Virginia,* 536 U.S. 304 (2005). The Supreme Court held that a national consensus had emerged against the execution of mentally retarded offenders since *Penry*. I joined the majority opinion in *Roper* because based on a careful application of the Supreme Court reasoning in *Atkins* where it found that the national consensus regarding the execution of the mentally retarded had changed since *Penry,* we concluded that similar changes had occurred regarding the execution of 16 and 17 year olds since *Stanford.*

   b. **When you joined the majority in *Roper,* were you aware that the US Supreme Court had denied habeas petitions in several cases in 2002 and 2003 that raised the same arguments that you and majority of the state court supported?**

      Response: Yes. I was aware that the Supreme Court had denied habeas petitions in several cases in 2002 and 2003 that raised the same arguments that our court supported. However, I joined the majority opinion because I believed it faithfully applied the reasoning that the Supreme Court had employed in *Atkins.* Additionally, I was aware that the U.S. Supreme Court has "rigorously insisted that such a denial [of a petition for

certiorari] carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review." *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950). The Supreme Court affirmed our court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005).

2. Shortly before you concluded your term as Chief Justice of the Missouri Supreme Court in 2005, you told the press that that judges must follow the law but that "their opinions can be shaped by their own life experiences."

a. Your comment indicates that you would consider not just fact and law but that you would also bring your personal experiences to the table when deciding cases. Please explain under what circumstances you would consider your personal experiences in rendering a judicial decision.

Response: If confirmed as a district court judge, under no circumstances would I consider my personal experiences in deciding a case. I would apply the law to the facts of each case and would not be affected by my personal experiences or the experiences of the litigants who appear before me.

b. Please explain when you consider it appropriate for a judge to decide cases based on the judge's personal preferences.

Response: It would never be appropriate for a judge to decide cases based on a judge's personal preferences. A judge must be fair and impartial to all litigants without any consideration of the judge's personal preferences.

3. In *State v. Kinder*, the majority of the Missouri Supreme Court found no ruling, statement, or conduct during trial that contained "any hint of bias." You dissented, arguing that the judge's change in party affiliation contributed to an appearance of bias, and said that the majority's "reliance" on the fact that the trial judge "made no obviously unfair ruling during trial is misplaced." Please explain the basis for that contention.

Response: The Missouri Rules of Court, Code of Judicial Conduct, Rule 2, Canons 2, 3(c) provide that a judge should avoid the appearance of impropriety and shall perform judicial duties without bias or prejudice. I contended in my dissenting opinion that the appearance of impropriety and bias is the standard of review, not whether an actual violation is demonstrated. The Code of Judicial Conduct, Rule 2, Comment (5) states "the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and appropriate temperament is impaired."

The trial judge made comments six days prior to trial that I believed a reasonable person after hearing the comments would find an appearance of impropriety and doubt the impartiality of the court. *See State v. Smulls*, 935 S.W.2d 9, 16-17 (Mo.banc 1996); *State v. Nunley*, 923 S.W.2d 911, 918 (Mo.banc 1996).

4. In *State v. McFadden*, you reversed a death sentence based on *Batson* challenges. Two of the jurors whose removal from the venire you criticized had never been the subject of a defense objection at trial. Please explain the basis for your review of the legality of striking those two jurors.

Response: In *Batson v. Kentucky*, 476 U.S. 79, 96-99 (1986), the Supreme Court held that a defendant could make out a prima facie case of discriminatory jury selection by "the totality of the relevant facts" of the prosecutor's behavior during the defendant's trial. My basis for review of the legality of striking two jurors that were not objected to by defense counsel was to show by "the totality of the relevant facts" that the prosecutor had engaged in discriminatory jury selection while making his jury strikes. Thus, I discussed other jurors who were similarly situated as those jurors when a proper *Batson* objection had been made.

5. You were the sole dissenter in *State v. Johnson*, a case in which the defendant confessed to murdering four people, including a sheriff, two deputy sheriffs, and a sheriff's wife. You argued that the majority's standard of review was too stringent. Please explain the basis for your dissent and explain the legal basis for your reference to the "proper standard" of review.

Response: The basis for my reference to the "proper standard" of review is found in *Strickland v. Washington*, 466 U.S. 668 (1984). The Supreme Court has held that in order to establish a successful claim of ineffective assistance of counsel, a defendant must show a reasonable probability that but for his counsel's allegedly unprofessional errors, the result of the trial would have been different. The majority opinion required Mr. Johnson to show that his lawyer's conduct was outcome-determinative, obviously a much higher difficult standard to meet. I dissented because I believed that the reasonable probability standard had been met. Based on my reading of U.S. Supreme Court precedent "Mr. Johnson [was] not required to show that his counsel's unprofessional errors are the 'most likely' reason why his defense failed, as the principal opinion holds." *State v. Johnson*, 968 S.W.2d, 123, 137 (White, J., dissenting). However, I also acknowledged that this was "a very hard case" and stated that "if Mr. Johnson was in control of his faculties when he went on this murderous rampage, then he assuredly deserves the death sentence he was given." *Id.* at 138. (White, J. dissenting).

6. 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: I understand that Justice Kennedy is referring to same-sex marriages that 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: Yes. I understand that the holding applies to Section 3 of the Defense of Marriage Act's prohibition against federal recognition of same-sex marriages that a State has recognized as lawful.

iv. Are you committed to upholding this precedent?

Response: I would follow *Windsor* and any other relevant precedent from the Supreme Court and Eighth Circuit.

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 believe the entirety of all majority opinions of the Supreme Court are binding precedent. Unless they are specifically overruled by later Supreme Court decisions, the binding precedent is entitled to full force and effect by lower court judges.

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

[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.
[2] *Id.* 2689-2690.

Response: Yes. If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Eighth Circuit.

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 believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

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

Response: If confirmed, I would follow *Windsor* and any other relevant precedent from the Supreme Court and Eighth Circuit.

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 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 believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

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

Response: Yes. If confirmed, I will follow *Windsor* and any other relevant precedent from the Supreme Court and Eighth Circuit.

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]

[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

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 believe the entirety of all majority opinions of the Supreme Court are binding precedent entitled to full force and effect by lower court judges unless specifically overruled by later Supreme Court decisions.

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

Response: Yes. If confirmed, I will follow *Windsor* and any other relevant precedent from the Supreme Court and Eighth Circuit.

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

Response: I believe the most important attribute of a judge is the ability to ensure fairness and impartiality in the court's proceedings, and I believe my record as a state court judge shows that I possess this attribute.

8. 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: I believe that a judge should be patient, diligent and open-minded in resolving matters that come before the court. A judge must also be able to consider every case fairly and objectively based on the facts and applicable law. I believe my record as a state court judge shows that I possess this attribute. I believe I meet this standard.

9. 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, I would faithfully apply controlling precedents of the Supreme Court and the Eighth Circuit and give them full force and effect whether or not I personally agree with such precedents.

10. 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: In a matter of first impression, I would first consider the plain language of the statute. If the language was clear, my inquiry would end and I would apply the law to the facts of the case. If the language was unclear, I would apply the canons of statutory construction to determine its meaning. I would also review and consider precedent

interpreting analogous provisions from the Supreme Court and Eighth Circuit as well as persuasive authority from other circuits addressing the same issue. If these sources did not resolve the issue, I would also consider legislative history.

11. 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: If confirmed as a district judge, I would apply binding precedent of the Supreme Court and Eighth Circuit even if I believed that the higher court's ruling was incorrect.

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

Response: The Supreme Court has held that federal statutes enacted by Congress are presumed constitutional. It is only appropriate for a federal court to declare a statute enacted by Congress unconstitutional if the statute clearly exceeds congressional authority or violates a constitutional provision.

13. 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. If confirmed as a district court judge, I would not apply foreign law or the views of the "world community" in determining the meaning of the Constitution.

14. 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 fully committed, if confirmed, that I would decide cases solely based on the facts and the relevant legal text and precedent, without considering any underlying political ideology or motivation, as I have done during my tenure as a state court judge.

15. 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: If confirmed, I would set aside any personal views and treat all parties fairly regardless of their background or circumstances. I would decide cases solely based on the facts and relevant law, as I have done during my tenure as a state court judge.

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

Response: If confirmed, I would play an active role in case management. I believe that a judge should use all of the tools available to control the pace of litigation. I would use the

court's case management system, status conferences, scheduling and discovery orders to advance the efficiency of the litigation process.

17. 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 believe judges play an important role in controlling the pace and conduct of litigation. If confirmed, I would take the steps listed in my response to Question 16 to control my docket.

18. 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: When I served as a state court judge, I would reach a decision in cases that came before me by seeking to learn the facts of the case from witness testimony, exhibits and legal submissions by the parties. I would then apply the relevant law to those facts. If confirmed, I would approach cases in the same manner. In determining what law to apply I would conduct independent legal research as necessary and not rely solely on the research conducted by the parties in the case. I would also rely upon binding precedent from the Supreme Court and the Eighth Circuit.

19. 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: I have had no such contact.

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.

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

Response: I received these questions on May 27, 2014. I drafted my responses to the questions and provided them to the U.S. Department of Justice. After speaking to a Justice Department official, I finalized my responses and authorized the Justice Department to submit my answers to the Committee.

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

Response: Yes.

Questions for the Record
Senator Ted Cruz

Ronnie L. White
Nominee, U.S. District Judge for the Eastern District of Missouri

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: During my previous service as a judge, my judicial philosophy was to treat all members of the public, lawyers, and court personnel with respect. If confirmed, this would continue to be my judicial philosophy. I am confident that many Supreme Court Justices have had a similar philosophy.

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: Yes. If confirmed, I would follow binding Supreme Court and Eighth Circuit precedents interpreting the United States Constitution, including that provided in *District of Columbia v. Heller,* 554 U.S. 570 (2008), where the Court explained that the public understanding of the text of the Constitution when it was enacted plays an important role in constitutional interpretation.

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: If confirmed, I would not overrule any precedent. I would adhere to my oath of office in following the precedent of the Supreme Court and Eighth Circuit.

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: The Supreme Court's decision in *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528 (1985), is binding precedent. If confirmed, I would follow and apply the holding in *Garcia* as I would all other binding precedent.

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 held that Congress' Commerce Clause power extends to regulating: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *See*

United States v. Morrison, 529 U.S. 598, 608-09 (2000); *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). If confirmed, I would follow Supreme Court and Eighth Circuit precedent regarding the extent of Congress' power under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court has held that the President's authority to act "must stem either from an act of Congress or from the Constitution itself." *Medellin v. Texas*, 552 U.S. 491, 524 (2008). The applicable judicial analysis that must be conducted in order for a court to determine whether a particular executive order or action is authorized by an act of Congress or the Constitution is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would follow Supreme Court and Eighth Circuit precedent in deciding challenges to executive action.

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

Response: The Supreme Court has held that a right is fundamental for purposes of substantive due process when it is "objectively, 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, I would follow all applicable Supreme Court and Eighth Circuit precedent in addressing issues involving fundamental rights.

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

Response: The Supreme Court has held that strict scrutiny under the Equal Protection Clause is appropriate when a classification burdens a fundamental right or when it operates to the disadvantage of a suspect class. *See*, *e.g.*, *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). If confirmed, I would follow the precedent of the Supreme Court and Eighth Circuit in deciding issues under the Equal Protection Clause.

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 have not formed an expectation concerning the use of racial preferences 15 years from now in public higher education. If confirmed, I would apply and follow the holding in *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013) and all other precedent of the Supreme Court and Eighth Circuit.