

**Senator Chuck Grassley
Questions for the Record**

**Tanya S. Chutkan
Nominee, United States District Court for the District of Columbia**

- 1. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: I do not believe that a judge's gender, ethnicity, or other demographic factor has or should have any influence in the outcome of a case.

- 2. You have spent part of your career working as a criminal defense attorney.**

- a. How will you transition from the role of advocate to that of a judge?**

Response: In my career, I have represented a wide range of clients in criminal and civil litigation, and have tried close to 40 cases. As a result, I fully appreciate the separate role of the judge as a neutral arbiter, and while the transition from advocate to judge will be significant, I do not anticipate that it will be difficult. If confirmed as a District Judge, I will at all times bear in mind that my duty is to be impartial, to follow binding precedent, and to maintain the rule of law.

- b. What assurances can you provide that will assuage any concerns that you will have a bias in criminal cases?**

Response: As a practicing lawyer, I have represented both plaintiffs and defendants in criminal and civil matters. As a result, I understand the importance of appearing before judges who are open to hearing arguments on both sides and who will rule impartially, without any bias whatsoever. I believe that I have a reputation in the legal community as someone who is reasonable, fair, and unbiased.

- 3. 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 hear and decide cases based on applicable law and precedent and with complete impartiality. I believe I possess that attribute.

- 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: A judge should be open minded, prepared to listen, and should treat everyone who enters their courtroom with courtesy, patience and respect. I believe that I possess those qualities.

- 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. 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: Stare decisis is the bedrock of our legal system. If confirmed, I will faithfully follow controlling Supreme Court and D.C. Circuit precedent and apply them to the cases that come before me, regardless of whether I personally agree or disagree with those precedents.

- 6. 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 deciding a case of first impression, I would first review the text of the applicable law or statute at issue, to determine if applying the plain language of the law or statute would allow me to decide the case. If the meaning of the provision was not clear from its text, I would look to Supreme Court or D.C. Circuit precedent involving analogous provisions. Absent such precedent, I would look to relevant cases from other circuits and districts for their persuasive authority, and in limited circumstances, where appropriate, I would examine the intent and history of the provision.

- 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 best judgment of the merits to decide the case?**

Response: I would apply all controlling Supreme Court or D.C. Circuit precedent, regardless of any personal opinion I might have regarding that precedent.

- 8. 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 to be constitutional, and a court should declare a statute unconstitutional only in the most limited of circumstances. Such circumstances may include when a statute clearly violates a provision of the Constitution, or where Congress has exceeded its constitutional authority. In considering a constitutional challenge, a district judge must apply any controlling Supreme Court or relevant Circuit Court precedent.

- 9. 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.

10. 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: A judge's rulings should never be affected by political ideology or motivation. I can state unreservedly that should I be confirmed, my rulings will be based on text and precedent, and my decisions will be made solely on the application of the law to the facts.

11. 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 been a criminal and civil litigator for more than 25 years, during which I represented individuals, corporations, and small businesses. Throughout my career, I have represented all parties with equal diligence, regardless of any personal beliefs and without regard to my clients' political beliefs, social status, or economic status. I have endeavored to maintain the highest ethical standard, and to treat people fairly, and with respect. If confirmed, I intend to be faithful to my judicial oath and to uphold the rule of law with impartiality.

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

Response: If confirmed, I intend to manage my caseload by maintaining reasonable and efficient schedules in all matters, deciding motions and other issues promptly, making appropriate use of Magistrate Judges, and encouraging dispute resolution through mediation where appropriate.

13. 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: Judges play an important role in conducting the fair and prompt resolution of matters that come before them. If confirmed, I intend to ensure that cases move efficiently by ruling on motions promptly, encouraging dispute resolution, and adhering to scheduling orders.

14. 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 intend to resolve legal issues based on applicable constitutional and statutory provisions, along with Supreme Court and D.C. Circuit precedent. I have been fortunate to have had substantial criminal litigation experience in the District of Columbia courts, which adhere to the Federal Rules of Evidence, and to have experience in a wide range of civil matters in federal courts throughout the country. However, I have not had extensive experience in federal sentencing issues, and I expect to fully familiarize myself

with the U.S. Sentencing Guidelines, which serve a very important function by helping to ensure consistency and uniformity in sentencing, and to thoroughly avail myself of the substantial resources available to assist me in making a smooth transition.

15. 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.

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

Response: I received the questions on March 4, 2014. I personally drafted my responses that evening and the next day and forwarded my draft to members of the Department of Justice Office of Legal Policy for review and comment. I then finalized my answers and authorized them to be submitted on my behalf.

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

Response: Yes.

**Senator Ted Cruz
Questions for the Record**

**Tanya S. Chutkan
Nominee, United States District Court for the District of Columbia**

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: I believe a judge should be impartial, open-minded, prepared, and respectful to all who come before him or her. I do not consider myself to be a student of the philosophies of the Supreme Court justices, and therefore do not have a view as to whose philosophy is most analogous with 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 Supreme Court has examined the original public meaning of constitutional provisions in deciding on the constitutionality of statutes, *see, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008), and, if confirmed, I will follow this and all other binding precedent.

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: I would not under any circumstance overrule precedent.

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 to be a District Judge, I would apply *Garcia* and all other binding precedents, regardless of whether I agreed or disagreed with them.

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 the Commerce Clause authorizes the regulation of three categories of activity: (1) “the use of the channels of interstate commerce,” (2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce,” and activities that threaten such instrumentalities, persons or things, and (3) “activities that substantially affect interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558-559 (1995); *see also United States v. Morrison*, 529 U.S. 598, 613 (2000) and *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J. concurring) (“Congress may regulate even noneconomic local activity if

that regulation is a necessary part of a more general regulation of interstate commerce.”). Although the Court highlighted the non-economic nature of the activity being regulated in *Lopez* and *Morrison* before striking down the statute or portion of the statute that was at issue in those cases, it has not specifically excluded non-economic activity from congressional regulation. If confirmed, I would apply the analysis set forth in *Lopez*, *Morrison*, *Raich*, and other applicable precedents in determining whether an activity is covered by the Commerce Clause.

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

Response: The President’s ability to issue executive orders or take executive action is limited by the authority granted to him in the Constitution or by an act of Congress. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952), Justice Jackson, in his concurrence, defined the judicially enforceable limits on presidential acts, and the Supreme Court has adopted his analysis. If confirmed, I would apply that analysis to any cases in which I am required to assess the legality of presidential executive orders or actions.

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

Response: The Supreme Court has “regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are objectively, ‘deeply rooted in the 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, 720-721 (1997) (internal quotation marks and citations omitted). If confirmed, I would follow that binding precedent.

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

Response: The Supreme Court has ruled that certain classifications, such as race, gender, national origin, or classifications that burden a fundamental right, are subject to a higher level of scrutiny under the Equal Protection Clause. See *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440-442 (1985); *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). If confirmed, I would follow Supreme Court precedent with respect to the evaluation of classifications and levels of scrutiny for purposes of the Equal Protection Clause, as in all other cases.

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 apply binding Supreme Court precedent concerning the use of racial preferences in public higher education, including *Grutter* and the Court’s decision in *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013), regardless of any personal view or expectation I might have.