

**Questions for the Record**  
Hearing: Nominations  
June 19, 2013  
Submitted by Senator Amy Klobuchar

**Questions for Madeline Hughes Haikala:**

**1. If you had to describe it, how would you characterize your judicial philosophy?**

Response: My judicial philosophy is grounded in the concept of respect: respect for the rule of law, respect for litigants, respect for the institution of the court, and respect for the balance of powers. Respect for the rule of law cabins every decision that I make as a judge. Respect for litigants gives lawyers and their clients (and *pro se* litigants) freedom to choose their strategies and develop their cases within the bounds of the rules of procedure and evidence. Respect for the institution of the court demands that I engage in no conduct that impugns the integrity of the court. Respect for the balance of powers among our three co-equal branches of government requires that I exercise only the powers of judicial office and that I leave to the legislative and executive branches of government the work that the Constitution assigns to them.

**2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: I have tried to set a tone in the courtroom that reflects my commitment to fairness and equality before the law. At my investiture as a magistrate judge, I quoted the following passage from Harper Lee's *To Kill a Mockingbird*: "[T]here is one way in this country in which all men are created equal – there is one human institution that makes a pauper the equal of a Rockefeller . . . in this country our courts are the great levelers, and in our courts all men are created equal." Litigants coming into the courtroom have the assurance that I have studied their case with an open mind and that their personal beliefs and demographics have no bearing on the court's evaluation of the issues presented.

**3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: District court judges must bind themselves closely to the doctrine of stare decisis. As a magistrate judge, I have demonstrated commitment to applying binding precedent from the United States Supreme Court and from the Eleventh Circuit Court of Appeals.

**Senator Chuck Grassley  
Questions for the Record**

**Madeline Hughes Haikala  
Nominee, U.S. District Judge for the Northern District of Alabama**

- 1. What recusal policies, if any, do you plan to implement with respect to your former law firm, Lightfoot, Franklin & White?**

Response: As a magistrate judge, I have recused from all cases in which attorneys from Lightfoot, Franklin appear. If confirmed, I will maintain that practice. Under Canon 3 of the Code of Conduct for United States Judges, I must disqualify myself from a proceeding in which my impartiality “might reasonably be questioned.” The Committee on Codes of Conduct, “recommends that judges consider a recusal period of at least two years” with respect to cases in which colleagues from the judge’s former law firm appear as counsel of record. Committee on Codes of Conduct Advisory Opinion No. 24, *Guide to Judiciary Policy*, Vol. 2B, Ch. 2, p. 24-1 (June 2009). I have followed that recommendation and will continue to do so. After two years, I will decide if a longer recusal period is necessary.

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

Response: The most important attribute of a judge is integrity. Webster’s online dictionary offers these synonyms for integrity: character, decency, honesty. From integrity, important attributes spring such as trustworthiness, and integrity engenders respect. I believe I possess integrity.

- 3. 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: In my view, a judge should listen well and be thoughtful, even-tempered, courteous, patient, and humble. Humility ranks high among these qualities because it is critical to a judge’s credibility. I believe I possess an appropriate judicial temperament.

- 4. 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, I am committed to following binding precedent, regardless of my personal views.

- 5. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not be affected by any political, economic, or philosophical influences?**

Response: When I was sworn in as a magistrate judge, I affirmed that I would, “administer justice without respect to persons, and do equal right to the poor and to the rich.” I also affirmed that I would, “faithfully and impartially discharge and perform all the duties incumbent upon” me as a magistrate judge. I have abided by that affirmation as a magistrate judge. If I am fortunate enough to be confirmed as a district court judge, I will continue to do so.

- 6. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.**

Response: The United States Supreme Court has held that the death penalty is constitutional. However, “[t]he death penalty may not be imposed on certain classes of offenders, such as juveniles under 16, the insane, and the mentally retarded . . .” *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (holding that “[t]he Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed”). As in all matters, I am committed to following binding precedent, regardless of any personal views.

- 7. 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 cases of first impression, I will follow the methods that the Eleventh Circuit employs. The Eleventh Circuit Court of Appeals just decided a question of first impression regarding a recent amendment to a long-standing statute. In answering the question presented, the court of appeals began with the text of the section of the statute at issue. Finding some ambiguity in that section, the court examined the statute as a whole to determine the context for the section in dispute. The court noted that the interpretation urged by one of the parties would produce an “absurd result,” and the court considered the way in which the Secretary of Labor interpreted the provision when the Secretary revamped the implementing regulations for the statute. Concluding that a term in the section was subject to multiple reasonable interpretations, the court turned to legislative history and to the canons of statutory construction to interpret and apply the code section. *U.S. Steel Min. Co. v. Director, OWCP*, 2013 WL 3213132 (11th Cir. June 27, 2013).

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

Response: Binding precedent establishes that a federal court may declare a federal statute unconstitutional only when Congress exceeds its authority. *See, e.g., U.S. v. Lopez*, 514 U.S. 549, 551 (1995).

- 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: In my view, foreign law or the opinions of the “world community” are irrelevant to judicial interpretation and application of the provisions of the United States Constitution.

**10. What is your understanding of the workload in the Southern District of New York? If confirmed, how do you intend to manage your caseload?**

Response: The workload of district court judges and magistrate judges in the Northern District of Alabama is extremely heavy. It is my responsibility to manage my docket effectively and efficiently both through my efforts and the efforts of my staff.

**11. 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: Often, there is little need for the court to intercede to set the pace of litigation; however, the court should reserve the right to intervene when parties fail to manage their case. Generally speaking, scheduling orders give a judge adequate oversight of the pace of litigation pending before him.

**12. 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: I have had the privilege of serving as a magistrate judge since October 1, 2012. I reach decisions in cases by studying the record, reading and/or listening to the arguments that the parties make, and identifying and applying the legal precedent that governs the issues presented.

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

Response: I received Senator Grassley’s questions on June 26, 2013. Over the course of a few days, I drafted and revised my responses. A member of the Department of Justice reviewed my answers.

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

Response: Yes, the answers to these questions reflect my true and personal views.

Questions for the Record for all nominees  
Senator Ted Cruz

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

Response: My judicial philosophy is grounded in the concept of respect: respect for the rule of law, respect for litigants, respect for the institution of the court, and respect for the balance of powers. Respect for the rule of law cabins every decision that I make as a judge. Respect for litigants gives lawyers and their clients (and *pro se* litigants) freedom to choose their strategies and develop their cases within the bounds of the rules of procedure and evidence. Respect for the institution of the court demands that I engage in no conduct that impugns the integrity of the court. Respect for the balance of powers among our three co-equal branches of government requires that I exercise only the powers of judicial office and that I leave to the legislative and executive branches of government the work that the Constitution assigns to them. I am not sure which Justice's judicial 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: At times, the United States Supreme Court and the Eleventh Circuit Court of Appeals have considered originalism in resolving issues that require interpretation of the United States Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). In conducting a constitutional analysis as a magistrate judge, or, if confirmed, as a district court judge, I will weigh arguments regarding originalism when binding precedent directs its consideration.

**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 as a district court judge, I will apply the precedent that is binding when I issue an opinion. Consequently, I would not overrule any precedent today. If the United States Supreme Court or the Eleventh Circuit Court of Appeals expands, contracts, or overturns a decision that is binding precedent today, I will follow the precedent that is in place when I resolve an issue.

**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: Respectfully, as a judge, my personal beliefs on this or any topic are irrelevant. I am bound to follow *Garcia* just as I am bound to follow all other precedent from the United States Supreme Court and the Eleventh Circuit Court of Appeals.

**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). “First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce.” *Id.* at 558-59; *see also United States v. Morrison*, 529 U.S. 598 (2000).

With respect to non-economic activity, the Supreme Court has not definitively established a bright line rule. In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia wrote that, “Congress’s authority to enact laws necessary and proper for the regulation of interstate commerce is not limited to law directed against economic activities that have a substantial effect on interstate commerce. Though the conduct in *Lopez* was not economic, the Court nevertheless recognized that it could be regulated as ‘an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.’ . . . The relevant question is simply whether the means chosen are ‘reasonably adapted’ to the attainment of a legitimate end under the commerce power.” *Id.* at 36-37 (Scalia, J., concurring) (quoting *United States v. Lopez*, 514 U.S. 549, 561 (1985)).

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

Response: Article II establishes the constitutional limits on the President’s powers. Federal statutes may delegate specific authority to the President. When a person with standing challenges an executive order, a court may consider whether Article II or a particular statute enables the President to issue the order. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1942) (“The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.”). The President has certain implied and inherent powers, but those powers derive from the Constitution or from statutory authority. If a person challenges an executive order or action, and the President contends that he was exercising his implied or inherent authority, then a court must determine whether that authority is rooted in the Constitution or in federal legislation. *Id.*

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

Response: The Supreme Court has held that the “established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, 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. Second, we have required in substantive-due-process cases a ‘careful description’ of the asserted fundamental liberty interest. Our Nation’s history, legal traditions, and practices thus provide the crucial ‘guideposts for responsible decisionmaking’ that direct and restrain our exposition of the Due Process Clause.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). Were a party to ask the Court to decide whether a particular right is fundamental for purposes of the substantive due process doctrine, I would use this precedent and precedent from the Eleventh Circuit Court of Appeals in evaluating the parties’ arguments concerning the issue presented.

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

Response: Binding precedent provides that a district court should examine a classification using heightened scrutiny under the Equal Protection Clause when the classification is suspect (*i.e.*, one involving race, gender, alienage, or national origin). *See, e.g., City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432 (1985).

**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 faced with a case concerning alleged racial preferences in public education, either as a magistrate judge or, if confirmed, as a district court judge, I will apply *Fisher v. Univ. of Texas*, No. 11-345, 2013 WL 3155220 (S. Ct. June 24, 2013), *Grutter v. Bollinger*, 539 U.S. 306 (2003), and any other binding precedent relating to the issue.