

Responses of Gregg Jeffrey Costa
Nominee to Be United States District Judge for the Southern District of Texas
to the Written Questions of Senator Chuck Grassley

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

Response: The most important attribute is a commitment to the fair and impartial administration of justice, which is the principle that has made our independent federal judiciary one of the greatest strengths of our constitutional system and set an example that many other countries have sought to follow. I believe I possess that attribute.

2. 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 most important elements of judicial temperament are open-mindedness; respect for all parties, attorneys and other participants in the judicial process; and humility. I have strived to exhibit those qualities as a practicing attorney and would continue to try and demonstrate those qualities if confirmed to be a federal district court judge.

3. 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.

4. 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 interpreting a constitutional provision, statute or procedural rule, I would first analyze whether the plain language resolved the issue. If ambiguity existed, I would apply commonly accepted canons of construction, take into account the structure and purpose of the term at issue and related provisions, and consider case law interpreting analogous terms.

5. 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: I would apply binding precedents from the Supreme Court or the Court of Appeals for the Fifth Circuit regardless of my personal views about the correctness of those decisions.

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

Response: Supreme Court precedent counsels that a court should avoid declaring a federal statute unconstitutional when nonconstitutional grounds exist for resolving the case. When a nonconstitutional resolution does not exist, a federal court should declare a federal statute unconstitutional when the Act is beyond the scope of Congress's enumerated powers or violates a provision of the Constitution.

7. 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 as a district court judge, one of my main priorities would be ensuring that cases proceed in an expeditious manner because the effective administration of justice requires timely resolution of disputes. I would set firm deadlines and make clear to litigants, both at initial scheduling conferences and in published procedures, the court's expectation that cases will proceed in a timely manner. I would also promptly resolve discovery disputes or other motions that require court action for the case to move forward.

8. 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: As a practicing trial lawyer, I am well aware that the need to resolve cases in an expeditious manner is one of the greatest challenges facing the federal judiciary. District court judges play an essential role in ensuring that cases are resolved in a timely manner. To achieve those timely resolutions, I would follow the practices discussed above in response to Question #7.

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

Response: On November 9, 2011, an attorney from the Department of Justice Office of Legal Policy emailed me the questions. The next day I provided responses, which I edited over the next couple days before submitting on November 14.

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

Response: Yes.