

Responses of Nancy Torresen
Nominee to be United States District Judge for the District of Maine
to the Written Questions of Senator Chuck Grassley

1. **Congress passed the Partial-Birth Abortion Ban Act in 2003, and the Supreme Court held this statute did not violate the Constitution in 2007 in *Gonzales v. Carhart*. Kansas has passed a late-term abortion law that bars abortions at 22 weeks gestation, or generally 20 weeks after conception, except under circumstances where it is necessary to save the life of the mother. Kansas argues that it has a legitimate interest in protecting the unborn by 20 weeks because they react to stimuli that would be recognized as painful if applied to an adult. Idaho and Oklahoma have passed similar legislation.**

- a. **Do you believe that the Kansas law is consistent with the Supreme Court's decision in *Planned Parenthood v. Casey*, where the Court said that abortion restrictions cannot pose an "undue burden"?**

Response: I have not studied the Kansas law or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) and *Gonzales v. Carhart*, 550 U.S. 124 (2007), both of which are lengthy cases with plurality opinions. I understand that the prevailing analysis as summarized in *Casey* and affirmed in *Carhart* is whether the state statute constitutes an "undue burden" on a woman's right to a pre-viability abortion. *Casey*, 505 U.S. at 846; *Carhart*, 550 U.S. at 145. This area of the law also requires an understanding of complex medical issues and technological advances which may be relevant to the analysis by the Supreme Court of whether abortion restrictions impose an "undue burden." If confirmed, I would work diligently to understand this complicated area where medicine and law converge, and I would faithfully apply the existing precedents of the United States Supreme Court and the United States Court of Appeals for the First Circuit on any issues to come before me.

- b. **Given your interest in women's health issues, do you believe that states have a legitimate interest in regulating or restricting women's access to abortions when the unborn feel pain?**

Response: The Supreme Court has reaffirmed in *Planned Parenthood v. Casey* and in *Carhart* that the states have "legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child." *Casey*, 505 U.S. at 846; *Carhart*, 550 U.S. at 145. I have not studied this issue sufficiently to form an opinion on whether or how fetal pain would affect the issue of restricting a woman's access to abortion. If such an issue arose, I would faithfully apply the precedents established by the United States Supreme Court and the United States Court of Appeals for the First Circuit to the facts as developed in the case before me.

2. **At your hearing, I asked about the Mabel Wadsworth Women's Health Center. In 2009, the Center held a vigil for Dr. George Tiller. You indicated you were not familiar with the incident. Would you please review any calendar, notes, or other materials to confirm your lack of involvement with any vigil or statement from the Center? Please report back to me with the results of your review.**

Response: I have reviewed my calendar and my notes and materials from 2009 relating to my involvement at the Mabel Wadsworth Women's Health Center. I can confirm that I was not involved in the planning of a vigil by the Mabel Wadsworth Women's Health Center. I did not attend any vigil for Dr. Tiller. I was also not involved in the preparation of any statements released by the Mabel Wadsworth Women's Health Center relating to Dr. Tiller's death.

3. **In your career as an Assistant United States Attorney, you briefed a number of habeas corpus cases. Considering your experience with the case law surrounded these petitions, do you agree with the Supreme Court's *Boumediene* decision (which extended the reach of American civilian law and the Writ of Habeas Corpus to cover foreign-citizen enemy combatant terrorists apprehended abroad and held at Guantanamo Bay)? Why or why not?**

Response: The habeas corpus cases which I briefed all involved United States citizens convicted of crimes in the State of Maine. My experience does not extend to the area of foreign citizen enemy combatant terrorists apprehended abroad and held at Guantanamo Bay.

- a. **How would you reconcile *Boumediene* with *Johnson v. Eisentrager*, which – according to Justice Scalia's dissent – “held beyond any doubt that the Constitution does not ensure habeas for aliens held by the United States in areas over which our Government is not sovereign”?**

Response: The majority opinion in *Boumediene v. Bush*, 553 U.S. 723, 762 (2008), acknowledged that the enemy aliens in *Johnson v. Eisentrager*, 339 U.S. 763 (1950) were denied access to the writ of habeas corpus and quoted the *Eisentrager* Court's statement that “at no relevant time were [the enemy aliens] within any territory over which the United States is sovereign and [that] the scenes of their offense, their capture, their trial and their punishment were all beyond the territorial jurisdiction of any court of the United States.” *Boumediene*, 553 U.S. at 762 (quoting *Eisentrager*, 339 U.S. at 778). The *Boumediene* majority then proceeded to distinguish *Eisentrager*, and it ultimately concluded that aliens detained as enemy combatants at Guantanamo Bay were entitled to use the writ of habeas corpus to challenge the legality of their detention. *Boumediene* is now the controlling authority on the issue of whether the writ is available to aliens detained as enemy combatants at Guantanamo Bay. I have no personal views on this issue. I will faithfully apply any existing precedents from the United States Supreme Court and the United States Court of Appeals for the First Circuit.

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

Response: In my view, the most important attribute of a judge is impartiality. A judge needs to be able to approach every case with an open mind, treat the parties even-handedly, consider the evidence fairly, and diligently apply the law to the case at hand. I believe that I possess these attributes.

5. 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 judicial temperament is a blend of qualities which are well spelled out in Canon 3 of the Code of Conduct for United States Judges. "A judge should be patient, dignified, respectful and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity." I believe I have the appropriate temperament to be a judge.

6. 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.

7. 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 matter of first impression, I would focus first on the plain meaning of any text I was called upon to construe. If that were ambiguous, I would look to the legislature's purpose. I would look for analogous law within the Court of Appeals for the First Circuit or the United States Supreme Court for guidance in deciding the case. Finally, I would consider cases from other Circuit or District Courts that might have already dealt with the issue.

8. 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 the decision of the Supreme Court or the Court of Appeals for the First Circuit regardless of whether I personally agree with the decision.

- 9. At your hearing, you were asked about the use of precedent and the role of courts in interpreting laws. You mentioned factors you would use. Is it ever appropriate for a judge to use foreign law in determining the meaning or application of U.S. law?**

Response: I cannot envision an instance where it would be appropriate to rely on foreign law to determine the meaning or application of U.S. law.

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

Response: A federal court should strike down a statute as unconstitutional only where it clearly violates the United States Constitution or where Congress has exceeded its Constitutional boundaries. General canons of construction set forth by the United States Supreme Court should be followed before any determination of unconstitutionality is made.

- 11. 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 coordinate with the Chief Judge in my district. I would take advantage of the weekly reports and the case management software used in my District to keep on top of the cases assigned to me. I have found, throughout my career, that most challenges can be met by hard work and perseverance.

- 12. 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 that judges play an important role in controlling the pace and conduct of litigation. If confirmed, I would follow the practice in the District of Maine of issuing scheduling orders in civil cases and discovery orders in criminal cases to notify the parties of the expectations and deadlines for every case.

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

Response: I received these questions on May 11, 2011. I drafted my answers and asked the U.S. Department of Justice to submit them on my behalf.

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

Response: Yes.