

**Senator Chuck Grassley
Questions for the Record**

**Gregory Woods
Nominee, U.S. District Judge for the Southern District of New York**

- 1. According to your questionnaire, it appears that other than a law school internship at the Philadelphia District Attorney's Office your practice has focused solely on civil matters. As a district judge, you will be asked to preside over both civil and criminal cases.**

- a. What experience do you have with criminal law?**

Response: Other than during the internship described above, criminal issues have arisen only occasionally as ancillary matters in the course of my practice. A small number of the cases that I worked on as a Trial Attorney at the Department of Justice involved parallel criminal proceedings.

- b. What steps have you taken to familiarize yourself with the area of criminal law?**

Response: I have begun to refresh my knowledge of criminal procedure by reviewing the Federal Rules of Criminal Procedure and a treatise in that area. I also plan to begin the dedicated study described below.

- c. What steps do you plan to take to get up to speed, should you be confirmed?**

Response: If I am confirmed to serve as a district court judge, I will do all of the work necessary to master this area of my responsibilities. I have had the opportunity to practice in several areas of law other than criminal law; I am a quick learner, and I know that there is no substitute for hard work. If I am confirmed to serve as a district court judge, I expect to continue taking the following specific steps: First, I am reviewing the Federal Rules of Criminal Procedure. Second, I will continue to read relevant treatises in the areas of criminal procedure and criminal law. Third, I will read the seminal cases that I identify from my review of the treatises. Fourth, I will take advantage of the training offered to incoming federal judges by the Administrative Office of the United States Courts. Fifth, I will draw upon the deep expertise of colleagues on the bench of the Southern District of New York to prepare me for that portion of my docket.

- 2. According to your questionnaire, you have not tried any cases to verdict or final judgment. Can you please elaborate on your trial and litigation experience for the committee?**

Response: As General Counsel of the Department of Energy, I supervise the work of

litigation counsel and participate in decision-making with respect to litigation that affects my agency; the Department of Justice generally litigates in court on behalf of the agency. As Deputy General Counsel of the Department of Transportation, I had similar responsibilities. During my time as a Trial Attorney in the Commercial Litigation Branch of the Civil Division of the United States Department of Justice, I worked full-time as a litigator. I conducted discovery, conducted and defended depositions, appeared in court and worked on motions. I prepared for trial, but my cases were resolved before trial. During my years in private practice, I did not personally litigate matters, with the exception of a pro bono matter, but I contributed my expertise to litigation matters involving my practice area.

- 3. During your hearing, I asked you to grade your performance as General Counsel for the Department of Energy, specifically how you did your job of ensuring that the Department complies with its obligation under law. I did not receive an answer to this question; please grade your performance in this area.**

Response: I believe that I have done my job very well. I would grade my performance highly, and I believe that my colleagues would also rate my performance as strong. I did my job of ensuring that the Department complied with its obligations under law in a number of ways. First, by providing strong leadership of the dedicated team of attorneys who work for me, by establishing clear expectations regarding the fulfillment of our obligations as agency counsel, and by supporting them in their work. Second, by expecting careful and complete legal analysis from my team. Third, by careful review and analysis of the specific legal issues that I am personally involved in. I hope that I have performed particularly well by leading by example—the care and diligence with which I approach my work, and by setting a positive tone at the top—projecting my commitment to sound legal analysis and professional conduct to my team.

- 4. Did you keep your commitment to do a full review of all of Department of Energy's current authorizations and to help identify if there are any areas that are duplicative and perhaps unnecessary?**

Response: Under my leadership, members of my staff regularly provide technical assistance to members of Congress upon request, and this would include continuing to work with Senator Murkowski, Ranking Member of the Senate Committee on Energy and Natural Resources, in her efforts to repeal unnecessary authorities. I believe that agencies have a responsibility to work with members of Congress to assist in the drafting of clear statutory text. I strongly support that function of my office, but refer such matters to career attorneys on my staff. I have not been personally involved in responding to requests for this assistance at my agency, but I am not aware that my office has failed to respond to any such request during my tenure.

- a. Please elaborate on what you have accomplished.**

Response: While the Office of General Counsel provides technical assistance on projects of this nature through inquiries from members of Congress, unfortunately,

we have not had the resources to undertake our own independent review of all of the Department of Energy's statutory authorities.

- 5. In 1986, I authored an update the Federal False Claims Act which reinvigorated the qui tam provisions and has helped recover over \$30 billion in taxpayer dollars. Your background materials indicate that while at the Department of Justice you have handled a number of False Claims Act cases.**

- a. Could you please briefly describe your experience with the False Claims Act, in general, and specifically any work you did with qui tam whistleblowers?**

Response: I began my legal career as a Trial Attorney in the Civil Fraud Section of the Justice Department. Nearly all of my work involved cases arising under the False Claims Act. A very large number of the cases that I handled originated with complaints by *qui tam* whistleblowers. I worked with whistleblowers or their counsel in the investigation and litigation of those cases. I worked with a broad array of relators in a variety of matters—from a sheet metal worker concerned about fraud in a major defense contract to a doctor concerned about improper billing practices in his new clinic. I learned firsthand from those experiences how important whistleblowers are in bringing potentially fraudulent behavior to light—government could not hire enough investigators to replace them. I also learned how courageous many of them are. Most of the whistleblowers with whom I worked were relatively low-level employees, who put their careers and reputations on the line to stand up to behavior by supervisors and peers that they believed to be wrong. I believe that the whistleblower provisions of the Act, particularly its whistleblower protection provisions, are an essential component of the Act's success.

- b. During the litigation of False Claims Act cases you handled, did you ever prepare memoranda advocating for or against intervening in a case filed by a qui tam whistleblower?**

Response: Yes.

- c. In your experience, did you ever receive approval to intervene in a matter, only to have that approval reversed and subsequently withdrawn?**

Response: No.

- d. If you were to receive such a subsequent declination, would you find that unusual?**

Response: Yes.

- e. What is your view regarding the constitutionality of the False Claims Act and its qui tam provisions?**

Response: I understand that federal courts have held the False Claims Act and its *qui tam* provisions to be constitutional. See *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000) (holding that private individuals have standing to bring suit in federal court on behalf of the United States).

- f. What factors should a judge consider when determining whether or not to award a portion of the government's recovery to qui tam whistleblowers, or determining the amount to award?**

Response: The False Claims Act establishes factors for a judge to consider in making this determination. 31 U.S.C. § 3730(d) describes those factors. If I am confirmed to serve as a district court judge, I will follow the relevant statutory provisions and any applicable appellate court precedent in making such a determination.

- g. If confirmed, will you ensure that qui tam whistleblowers are afforded all the rights and privileges authorized by the False Claims Act?**

Response: Yes. If I am confirmed to serve as a district court judge, I will honor *qui tam* whistleblowers' rights and privileges under the False Claims Act in any such case that may come before me.

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

Response: I believe that there are many important attributes for a judge, including moderation and restraint, intellect, a strong work ethic and humility. While all of these traits work best together, I believe that the first is most important because it promotes adherence to the rule of law, and, thus, helps to ensure the predictability and reliability of our judicial system. I believe that I possess that attribute.

- 7. 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 render objective, impartial and fair decisions. A judge should also treat all who come before him or her with dignity and respect. I believe that the most important element of judicial temperament is moderation. A moderate, restrained temperament supports the judge's ability to render impartial and fair judgments in all cases, solely on the basis of the law and facts presented in the case. Such a temperament is also valuable because it projects the impartiality and fairness of the judge's decisions to the litigants and others who appear before him or her. I believe that I meet this standard.

- 8. 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 the precedents of higher courts faithfully and giving them full force and effect.

- 9. 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: If I am confirmed to serve as a district court judge, my job will be to render fair, objective, impartial judgments based on the law and facts of the case before me. I am deeply committed to that obligation. If confirmed, I will always work to provide clear, reasoned explanations of decisions, which should also assure litigants that the basis of a given decision is the law and the facts of the case, not bias or other outside influence.

- 10. 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: Yes. The Supreme Court has ruled that the death penalty is constitutional with specified limitations.

If I am confirmed to serve as a district court judge, I will follow governing law and apply it fairly to the facts of the case before me, and, if called upon to impose a death penalty, I would impose that sentence without objection.

- 11. 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 case of first impression involving statutory construction, I will look to the text of the statute. If the statutory text is not ambiguous, I will follow the plain meaning of the text. If the text is ambiguous, I will follow Supreme Court and appropriate circuit court precedent to determine the appropriate canon of statutory construction under the circumstances.

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

Response: A federal court may declare a statute to be unconstitutional “only upon a plain showing that Congress has exceeded its constitutional bounds.” *United States v. Morrison*, 529 U.S. 598, 607 (2000). Courts should approach such issues cautiously, with due respect for the decisions of Congress. Generally, courts follow the canon of constitutional avoidance and avoid reaching a constitutional question in the interpretation of a statute if an acceptable alternative construction of the statute exists. If I was confirmed to serve as a district court judge, I would follow Supreme Court and appropriate circuit court precedent with respect to this issue and would declare a statute unconstitutional if required by precedents.

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.

14. 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: I understand that the workload in the Southern District of New York is very demanding. If I am confirmed to serve as a district court judge, I will actively manage my caseload. My approach will include the regular use of status conferences to establish a program for the speedy adjudication of the case. I will establish reasonable schedules for discovery, motions and trial, and I will expect the parties to adhere to those schedules absent special circumstances. I will work to decide motions within a specified period of time, so that my chambers does not become a source of delay. I will work with the magistrate judges in the Southern District of New York to help manage discovery matters and any other matters capable of referral. Where feasible, I will encourage mediation and work to help parties resolve their matters through settlement. I will use pretrial conferences to try to narrow and define issues to be presented at trial and to provide an opportunity for the parties to consider settlement. If I am confirmed to serve as a district court judge, I hope to draw upon my colleagues on the bench in the Southern District of New York to adopt a comprehensive set of best practices.

15. 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: Yes, I believe that judges have an essential role in controlling the pace and conduct of litigation. My answer to Question 14, above, describes a number of specific steps that I will take to control my docket if I am confirmed to serve as a district court judge.

16. 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 I am confirmed to serve as a district court judge, I will base my decisions on the facts presented to me and will be guided by applicable law and precedent. I believe that my professional experience has prepared me well to do the substantive legal work required, with diligent effort. I also believe that I have the temperament to be able to provide the fair, impartial and objective decisions that will be required of me if I am confirmed to serve as a district court judge. I believe that the most difficult part of this transition for me will be developing my command of criminal law and procedure, an area in which I have not practiced in the past.

17. 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 not had any contact with the AAJ, the AAJ Judicial Task Force or any individual or group I know to be associated with the AAJ.

- 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: I am not aware of any such endorsements or promised endorsements.

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

Response: I received these questions on July 17, 2013. I drafted responses to the questions and provided them to the Office of Legal Policy of the Department of Justice. I discussed those responses with an official of that office. I made revisions to my responses and authorized their submission to the Committee on July 22, 2013.

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

Response: Yes.

Questions for Judicial Nominees
Senator Ted Cruz
Responses of Gregory Woods

Judicial Philosophy

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 founded on the principle of strict adherence to the rule of law. I believe that judges should base their decisions firmly on existing law and precedent, and that decisions should be limited to issues properly before the court. While I have deep respect for the U.S. Supreme Court as an institution, I have not studied the judicial philosophies of each of the individual Justices of the Court. As a result, I cannot identify a particular Justice 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 looked to the original intent and the original public understanding of the Constitution. *See, e.g. United States v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004); *Alden v. Maine*, 527 U.S. 706 (1999). If I am confirmed to serve as a district court judge, I will follow Supreme Court and applicable circuit court precedent in deciding particular cases before me.

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 I am confirmed to serve as a district court judge, I will not overrule binding precedent. I will follow Supreme Court and relevant circuit court precedent in deciding the cases before me. If a decision that is precedent today is overruled subsequently by a higher court of competent jurisdiction, I will follow the new precedent.

Congressional Power

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 I am confirmed to serve as a district court judge, I will follow the Supreme Court's ruling in *Garcia* and any subsequent Supreme Court or applicable circuit court decisions with respect to the proper approach to the protection of State sovereign interests.

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 defined the limits of Congress' authority to regulate in reliance on the Commerce Clause: "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, i.e., those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (citations omitted). In *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court observed that "*Lopez*'s review of Commerce Clause case law demonstrates that in those cases where we have sustained federal regulation of intrastate activity based upon the activity's substantial effects on interstate commerce, the activity in question has been some sort of economic endeavor." *Morrison* at 611. If I am confirmed to serve as a district court judge, I will follow Supreme Court and applicable circuit court precedent with respect to the extent of Congress' Commerce Clause power.

Presidential Power

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

Response: As the Supreme Court has stated, "[t]he President's authority to act, as with the exercise of any government power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (Jackson, J., concurring)). These limitations on the President's authority are judicially enforceable.

Individual Rights

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

Response: The Supreme Court has stated 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.'" *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted). If I am confirmed to serve as a district court judge, I will follow Supreme Court and applicable circuit court precedent with respect to the identification of "fundamental" rights for purposes of the substantive due process clause.

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

Response: The Supreme Court has identified certain classifications as requiring heightened scrutiny, such as classifications based on race, national origin and gender. The Supreme Court has also mandated strict scrutiny of state action that impinges on personal rights protected by the Constitution. If I am confirmed as a district court judge, I will follow Supreme Court and applicable circuit court precedent with respect to classifications that should be subjected to heightened scrutiny 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 do not have a basis to evaluate whether or not the Supreme Court will draw this conclusion in the future. If I am confirmed to serve as a district court judge, I will follow the Supreme Court's holding in *Grutter* and any other applicable controlling precedent to the case before me.