

**Senator Chuck Grassley
Questions for the Record**

**Matthew Frederick Leitman
Nominee, United States District Judge for the Eastern District of Michigan**

- 1. At your hearing I asked what you believed to be a judge's role in *qui tam* cases, you responded that you would follow precedent. Could you please expound on this answer?**

Response: I have represented defendants in approximately three *qui tam* cases, and I have given presentations about the development and implementation of corporate programs that are intended to insure compliance with applicable laws, including laws prohibiting the submission of false claims to the government. My involvement in these matters would not affect the manner in which I would approach *qui tam* cases if confirmed as a district judge. In *qui tam* cases, as in all other cases, I would begin by identifying the relevant statutory provision(s) and applicable precedent from the Supreme Court and the Sixth Circuit. I would then apply the statutory language and controlling precedent to the facts of the case. I would approach every case, including *qui tam* cases, in an entirely impartial manner and would not favor one side or the other.

- 2. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

Response: No. A judge must always remain neutral and may never favor one side over the other.

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

Response: In my opinion, the most important attribute of a judge is respect – for precedent, for the other branches of government, and for the attorneys and litigants who appear before the court. I also think it is essential that a judge have an unwavering commitment to fairness and impartiality. I have these attributes.

- 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: I believe that when dealing with attorneys and parties, a judge should be firm but fair and should always treat all who appear before him with courtesy. A judge should

also have patience and should conduct himself in a manner that makes clear to the parties that he is approaching all matters before him with impartiality and an open mind. I would bring these elements of judicial temperament to the bench if confirmed.

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: I am fully committed to following the binding precedents from the United States Supreme Court and the Sixth Circuit. Indeed, in my view respect for precedent is one of the bedrock principles of our legal system.

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: If presented with a question of first impression concerning the interpretation of a federal statute, I would begin with the plain language of the statute. If the language, alone, did not resolve the question, I would follow the rules of statutory construction established by the Supreme Court and the Sixth Circuit to attempt to discern the statute's meaning, and I would consider the structure and context of the provision at issue. I would also carefully consider any Supreme Court or Sixth Circuit decisions construing analogous statutory provisions.

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 faithfully apply the controlling precedent without any regard for my personal view of its correctness.

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

Response: When confronted with a constitutional challenge to a federal statute, a federal court must begin with the presumption that the statute is constitutional. *See, e.g., United States v. Morrison*, 529 U.S. 598, 607 (2000). Moreover, a federal statute "ought not to be construed to violate the Constitution if any other possible construction remains available." *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 500 (1979). When a federal court cannot avoid reaching a constitutional question, it should declare a federal statute unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *Morrison*, 529 U.S. at 607.

- 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: With the exception of English common law, it is not appropriate for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution.

- 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: I give the committee my most solemn assurance that I will set aside any political views and/or motivations when rendering decisions and that I will ground my decisions in applicable precedent and text.

- 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 am firmly committed to the proposition that, if confirmed, any personal views would have no place in my judicial decision making. In my nearly twenty years as a federal court litigator, I have represented a wide variety of clients – from large corporations to indigent individuals – as both plaintiffs and defendants, and that experience, along with my commitment to treat all parties equally and fairly, will enable me to dispense justice even-handedly to all who appear before me.

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

Response: I would meet with counsel and with the parties early in the litigation process, would set a fair but firm schedule and would hold the parties to the schedule, and would work hard to resolve outstanding motions and matters on my docket. Finally, I would actively encourage the parties to utilize alternative dispute resolution mechanisms (e.g., mediation, facilitation, etc.) with the hope that such mechanisms would resolve a reasonable percentage of cases on my docket.

- 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: I believe that judges play an important role in controlling the pace and conduct of litigation. If confirmed, I would meet with counsel early in the litigation process to establish a fair but reasonable schedule for proceedings, and I would hold counsel to that schedule. I would make myself available to parties promptly to resolve discovery disputes in order to avoid having those disputes bog down the litigation. I would hear and resolve motions promptly.

- 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: As a judge, I would begin the decision-making process by giving the parties a full and fair opportunity to present their arguments and positions. I would then look first to statutory language (if the case involved a question of statutory interpretation) and for binding precedent from the Supreme Court and/or Sixth Circuit. If there were no binding precedents, I would look for persuasive decisions from other federal courts. I would resolve cases by applying the relevant precedents to the facts before me. I expect that the most challenging aspect of the transition from private practice to judicial office will be attempting to learn new areas of the law in which I have not practiced, but I am committed to doing the work and study necessary to understand issues that are new to me. I also anticipate that adjusting to a new and comparatively isolated work environment that does not include my outstanding colleagues at my law firm will be a challenging aspect of my 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 November 6, 2013, and then prepared my responses. I next discussed my responses with a representative of the Department of Justice. I authorized the Department of Justice to submit my responses to the Committee.

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

Response: Yes.

Questions for the Record
Senator Ted Cruz

Responses of Matthew F. Leitman
Nominee, United States District Court for the Eastern District of Michigan

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: My judicial philosophy is to approach each case impartially, to focus carefully and narrowly on the issues presented, and to decide each case by applying governing precedent to the facts of the case. I have not studied the judicial philosophies of any individual justices in sufficient detail to determine which of their philosophies is most analogous to mine. I have tremendous respect for the Supreme Court as an institution and would faithfully apply all of its decisions to the cases before me.

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: If I am fortunate enough to be confirmed, when confronted with a case presenting a question of constitutional interpretation, I would be guided by the precedents of the Supreme Court and the United States Court of Appeals for the Sixth Circuit concerning the proper framework for resolving constitutional questions. I am aware that in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original understanding of the constitutional text by ordinary citizens at the time of its adoption in resolving a constitutional question, and I am committed to following *Heller* and other binding constitutional interpretation 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: As a district judge, I would not overrule a 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: The Supreme Court’s decision in the *Garcia* case is binding precedent that all district judges are required to follow and apply. If confirmed, I would follow *Garcia* (and other relevant precedents from the Supreme Court and Sixth Circuit) where applicable.

Do you believe that Congress’ Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: If confirmed and presented with a case concerning the extent of Congress' power under the Commerce Clause, I would follow applicable Supreme Court and Sixth Circuit precedent. I am aware that in *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), the Supreme Court acknowledged that under the Commerce Clause, Congress may regulate: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities that have a substantial relation to interstate commerce. *See also United States v. Morrison*, 529 U.S. 598, 608-09 (2000). I also recognize Justice Scalia's conclusion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring in the judgment), that under the Supreme Court's precedents "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce."

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

Response: The Supreme Court has explained that "[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)). If confirmed, I would follow *Medellin* and other relevant Supreme Court and Sixth Circuit precedent concerning the extent of the President's authority.

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

Response: According to the Supreme Court, a right is "fundamental" for purposes of the Due Process Clause if it is "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 confirmed, I would follow Supreme Court and Sixth Circuit precedent regarding the determination of whether a right is "fundamental" for substantive due process purposes.

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

Response: The Supreme Court has held that "equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976).

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: The Supreme Court addressed the issue of racial preferences in higher education in *Grutter* and, more recently, in *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013). If confirmed, I would follow and apply *Grutter* and *Fisher*.