

**Response of Laurie J. Michelson
United States District Judge Nominee for the Eastern District of Michigan
To Senator Chuck Grassley’s Questions for the Record**

1. I asked you about your thoughts on cameras in the federal courtroom and you responded that you would follow the rules of that court. However, judges are often called upon to suggest rule changes in their courts.

a. Can you please answer whether, if authorized, you would approve or disapprove of the use of audiovisual media during court proceedings?

Response: I appreciate the various considerations underlying the decision whether to allow cameras in the courtroom – e.g., enhancing public understanding of and confidence in the operation of the courts, ensuring litigants’ rights to a fair trial and due process, and protecting the privacy and safety interests of various trial participants. Thus, if our court were to adopt a rule authorizing each individual judge to approve or disapprove the use of audiovisual media during court proceedings, I would make the decision on a case-by-case basis after analyzing the scope of the authorization, hearing from the parties, and considering the issues referenced above.

2. You have been a magistrate judge for around three years. What have you found to be the most challenging requirement of a jurist?

Response: The entirety of the job is challenging, though I consider it an honor and a privilege to work hard to meet the challenges. As a Magistrate Judge, I frequently deal with complicated issues. I think about the fact that my decisions can significantly impact people’s lives, whether plaintiffs or defendants, and often their freedoms. It is an awesome responsibility and it humbles me every day. I have found the greatest challenge to be deciding whether someone charged with or indicted for a federal crime should be detained pending trial. In my circuit, “[t]he default position of the law . . . is that a defendant should be released pending trial.” *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010). Pursuant to “the Bail Reform Act, 18 U.S.C. § 3142 . . . a defendant may be detained pending trial only if a judicial officer ‘finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community[.]’” *Id.* (quoting 18 U.S.C. § 3142(e)). Making this determination prior to any adjudication of guilt, with the possibility of depriving someone of their liberty is, and should be, extremely challenging.

3. 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, it is never the role of a judge to favor one party over another. To the contrary, the role of a judge is to fairly and impartially decide the issues before him or her based on the relevant facts and controlling law and to do so for all parties.

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

Response: The most important attribute of a judge is fair-mindedness, which is defined as having an honest, fair, and impartial way of thinking. Yes, I possess this attribute.

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: My view of the appropriate judicial temperament is that a judge should treat all lawyers, litigants, and their issues with respect, patience, and a polite demeanor. I consider all of these elements important and I meet this standard.

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. 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: For nearly three years as a Magistrate Judge I have been committed to following the precedents of the United States Supreme Court and United States Court of Appeals for the Sixth Circuit faithfully and giving them full force and effect. If I was confirmed as a federal district court judge, I would continue to be committed to following those precedents.

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: For cases that involve statutory or constitutional interpretation, I first look to the text of the relevant provision and utilize the canons of statutory construction to determine whether the provision's meaning was clear and unambiguous. If the language is clear and unambiguous, the statute or constitutional provision is applied as written. If the language is ambiguous, I look to precedent from the United States Supreme Court and United States Court of Appeals for the Sixth Circuit for guidance – for example, to see if they have interpreted provisions in other laws with similar wording. If further guidance is needed, I will review case law from other jurisdictions within the United States analyzing the same or analogous statutory or constitutional provisions. I follow this same approach in other types of cases as well – i.e., in the absence of controlling precedent, I review persuasive authorities from other jurisdictions that discuss and/or address the issue(s) under consideration.

- 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 best judgment of the merits to decide the case?**

Response: A fundamental responsibility of a district judge is to follow controlling precedent irrespective of his or her personal views regarding the correctness of the decision. I have done so as a United States Magistrate Judge for nearly three years and will continue to do so if confirmed as a district judge. At all times, therefore, I will follow the decisions of the Supreme Court and the United States Court of Appeals for the Sixth Circuit.

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

Response: I respect the role of Congress as the duly elected representatives of the American people responsible for enacting legislation. The statutes enacted by Congress are presumed to be constitutional. A Court should declare a federal statute unconstitutional only when Congress has exceeded its authority under the United States Constitution or the statute violates a provision of the United States Constitution.

- 10. 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.

- 11. What assurances or evidence can you give the 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: As a United States Magistrate Judge for nearly three years, the Committee can review my record, including transcripts of hearings, reports and recommendations, and opinions and orders, to see that my decisions are grounded in precedent and the text of the law. Political ideology and motivation play no role in my decision-making. If confirmed as a district judge, I will continue to fairly and impartially apply the decisions of the United States Supreme Court and United States Court of Appeals for the Sixth Circuit in all cases.

- 12. 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: As mentioned above, as a United States Magistrate Judge for nearly three years, the Committee can review my record, including transcripts of hearings, reports and recommendations, and opinions and orders, to see that my personal views play no role in my decision-making and that I am fair to all who appear before me. If confirmed as a district judge, I will continue to fairly and impartially apply the decisions of the United States Supreme Court and United States Court of Appeals for the Sixth Circuit for all litigants.

13. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will continue to manage my caseload effectively and efficiently both through my efforts and the efforts of my staff according to the case management procedures set forth in Question 14.

14. 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 important role in controlling the pace and conduct of litigation. As a United States Magistrate Judge, I work closely with my staff to control our docket. I monitor the electronic filings daily and actively supervise all cases from the time of filing to disposition. In addition to making sure that the parties comply with their scheduling orders and applicable local and federal rules, I conduct regular telephone and in-person status conferences to discuss and resolve case management issues. In fact, I encourage the parties to contact our chambers when discovery disputes arise and strive to resolve them informally. I also work hard to schedule hearings and issue rulings as expeditiously as possible. For criminal cases, I will certainly abide by the Speedy Trial Act. Additionally, as a current Magistrate Judge, I am confident in my ability to utilize Magistrate Judges most effectively to assist in controlling my docket. If confirmed, I will continue these case management practices and, following consultation with more experienced District Judges, modify them and/or adopt new procedures as necessary.

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: My decision-making process as a Magistrate Judge is to study the record and learn the facts, research and study the controlling law and rules, consider the parties' arguments, and then fairly and impartially apply the controlling law to the relevant facts. The sources of information that I look to for guidance are the precedents from the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit as well as the relevant Federal Rules of Civil and Criminal Procedure. In the absence of any controlling precedent, I consider persuasive authority from other jurisdictions within the United States.

16. 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.

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

Response: I received these questions on November 6, 2013 and promptly prepared responses which I forwarded to the Department of Justice on November 8, 2013. I then made some revisions and sent final responses to the Department of Justice on November 15, 2013.

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

Response: Yes.

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To Questions for the Record from 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 to fairly and impartially decide the issues before me based on the specific facts of the case and controlling law. While I review Supreme Court decisions for substantive guidance, I do not have sufficient familiarity with the body of decisions of any particular Justice of the Warren, Burger, or Rehnquist Courts to identify a single Justice whose judicial philosophy might be described as 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: If I am fortunate enough to be confirmed as a district judge, then in deciding cases involving constitutional interpretation, my obligation would be to determine whether there is binding precedent from the United States Supreme Court and United States Court of Appeals for the Sixth Circuit and to follow that precedent, including where the appellate courts have interpreted the Constitution using originalism. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (applying original public meaning).

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: A fundamental responsibility of a district judge is to follow controlling precedent. If confirmed, there is no circumstance in which I would overrule controlling 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: If confirmed, I would be bound by and would follow the Supreme Court’s decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), without regard to any personal agreements or disagreements with its reasoning.

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 found that the Commerce Clause allows congressional regulation of three general categories of activity: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-559 (1995). The Supreme Court has emphasized the non-economic nature of regulated activity in invalidating certain legislation as exceeding Congress's commerce power, *see, e.g., United States v. Morrison*, 529 U.S. 598 (2000) (emphasizing the non-economic nature of the activity in holding that the Commerce Clause did not provide Congress with authority to enact the civil remedy provisions of the Violence Against Women Act), *Lopez*, 514 U.S. at 567 (holding that Congress exceeded its Commerce Clause power by criminalizing the possession of firearms in a school zone because such conduct was not an economic activity substantially affecting interstate commerce). The Supreme Court has also, however, concluded that Congress may regulate non-economic activity where such regulation is "an essential part of a larger regulation of economic activity," *Lopez*, 514 U.S. at 561; *Gonzales v. Raich*, 545 U.S. 1, 34 (Scalia, J., concurring). If confirmed, I would follow these precedents and any other binding precedent from the Supreme Court and the United States Court of Appeals for the Sixth Circuit on the issue of Congress' Commerce Clause power.

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

Response: The Supreme Court recently reiterated that "[t]he President's authority to act, as with the exercise of any governmental 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 (1952)). If confirmed, I would apply that precedent and any other relevant precedent of the United States Supreme Court and United States Court of Appeals for the Sixth Circuit defining the limits of a President's power.

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

Response: If I was confirmed and a case presenting this issue came before me, I would look to Supreme Court and Sixth Circuit precedent to determine whether they had held that a particular right was "fundamental." *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (explaining 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.'" (citations omitted)).

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

Response: The Supreme Court has held that “strict scrutiny” applies to classifications based upon “race, alienage, or national origin,” *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985), and has applied intermediate scrutiny to classifications based upon gender and illegitimacy, *id.* at 440-41. I will apply this precedent and any other relevant precedent from the Supreme Court and the Sixth Circuit.

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: Since *Grutter*, the Supreme Court has recently addressed racial preferences in public higher education in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013). If confirmed, I would follow the Supreme Court’s precedents on this issue without regard to any personal views or expectations.