

**Senator Chuck Grassley  
Questions for the Record**

**M. Douglas Harpool  
Nominee, U.S. District Judge for the Western District of Missouri**

- 1. I asked you about a statement you made in your hearing and I had some follow-up questions on it. You said that you were pro-choice because it's "not a government issue". When I asked you about this you told me that you would follow precedent in deciding cases before you. Abortion and life matters have very much become a "government issue". Would you please explain more specifically to me what rights and duties the state governments and the federal governments have in regulating abortion?**

Response: A state government has the right to regulate abortion, except where prohibited by a state constitution or the United States Constitution. See e.g., *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). The federal government has the right to regulate abortion, except where prohibited by the United States Constitution. See e.g., *Gonzales v. Carhart*, 550 U.S. 124 (2007). As a district judge, I would follow Supreme Court precedent in determining which governmental regulations of abortions are legal. My job as a district judge would be very different than the job I had as a legislator. As a legislator, it was my responsibility to take position on issues of public policy. As a district judge, my job will be the opposite. As a district judge, my personal beliefs concerning public policy would be set aside to apply the rule of law and judicial precedent.

- 2. Will you please further elaborate on what steps you have taken and will take to get up to speed on criminal law matters?**

Response: While my law practice is exclusively a civil one, it frequently involves issues concerning alleged violations of civil rights by the law enforcement community. That has required me to keep up with legal issues pertaining to search, seizure, detention, arrest, and alleged malicious prosecution. I also serve on the Federal Practice Committee of the United States District Court for the Western District of Missouri, which from time to time discusses issues relevant to federal criminal law. Since being nominated, I have begun the process of becoming more familiar with federal sentencing guidelines and refreshing my knowledge of federal criminal law. This has primarily been completed through self-study, review of the applicable rules, review of jury instructions used in criminal cases, and the *Bench Book for United States District Judges*, Fourth Edition. I plan to continue self-study, to take advantage of training opportunities provided through the Administrative Office of the United States Courts, and to sit through criminal trials before other district judges.

- 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: A district judge should apply the law to the facts without regard to the identity of the parties. A judge should never tilt the scales of justice to favor any party.

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

Response: Integrity and impartiality are the most important attributes of a judge. I believe I possess both.

**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 judge must be calm, courteous and confident. I believe I have exhibited each of those temperaments.

**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 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: I would look first to the plain meaning of the words in order to determine legislative intent. Where the text is unambiguous, further inquiry is not required. If, however, ambiguity remains after application of the plain meaning of the words, I would look to rules of construction and interpretation used by the Supreme Court or the U.S. Court of Appeals for the Eighth Circuit in analogous situations. If no such reported cases could be found, I would then look to the rules of interpretation and construction used by other circuit courts in analogous situations.

**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: I would apply the decision.

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

Response: The federal courts should only declare a statute enacted by Congress unconstitutional when a congressional action exceeds Congress' authority, or when an act of Congress impermissibly infringes on a Constitutional right.

**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 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 first, and most importantly, my personal assurance. In my law practice, I have represented plaintiffs and defendants, elected officials from both major political parties, large corporations and private persons. Never in the representation of a client have I allowed underlying political ideology or political motivation to impact my work. I have over thirty years' experience separating personal political beliefs from my work in the legal system as an officer of the court. My record demonstrates my commitment to keeping political ideology out of the courtroom where the rule of law must prevail regardless of political belief or affiliation.

**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: I give first, and most importantly, my personal assurance. I believe my record of representing both plaintiffs and defendants in civil disputes will help me understand the perspectives of all parties to a dispute. I have never allowed personal beliefs to interfere with my duties as an advocate for my client. I will not allow them to interfere with my obligation as a judge to protect the rule of law.

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

Response: If confirmed, I intend to personally be involved in caseload management by establishing clear expectations with counsel and then reasonably enforcing those expectations. I would expect to require periodic updates by counsel on progress being made in advancing a case toward final disposition. I also would intend to address pending motions without unnecessary delay and to effectively dispose of cases by summary disposition when appropriate.

- 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. A trial judge should make specific scheduling orders and then reasonably enforce them. I believe requiring periodic progress reports from counsel can also be helpful in advancing cases toward timely disposition. I believe my experience as a litigator gives me a sense of the pace appropriate for litigation, and an understanding when delays in case disposition are unnecessary or inconsistent with the administration of justice.

- 15. 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: I will look at the plain meaning of the statutes enacted by Congress, case precedent established by higher courts, and the evidence of the case. After thirty-three years of advocating for one party in litigation, service as a judge will require me to make the transition to objective decision maker. My focus as a judge will be on protecting the rule of law and the integrity of the judicial process rather than any particular outcome to the litigation. I am confident I am prepared to make the transition from an advocate where my loyalties have been focused on the interest of my client, to a judge, where my interest will be in protecting the integrity of the rule of law.

- 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 the questions from the Department of Justice on November 13. I drafted these responses and presented them to officials from the Department of Justice. After receiving comments from them, I edited the responses and authorized the Department of Justice to submit them to the committee on my behalf.

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

Response: Yes.

**Questions for the Record**  
**Senator Ted Cruz**

**M. Douglas Harpool**  
**Nominee, U.S. District Judge for the Western District of Missouri**

**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: I do not have any particular judicial philosophy. I do believe it is very important for judges to respect judicial precedent. I also believe in judicial restraint which requires courts to only act when presented with an actual case or controversy which is ripe for adjudication and then to issue as narrow a ruling as necessary to resolve the case presented. A trial judge in particular should strictly adhere to judicial precedent established by higher courts. The trial judges I hope to emulate are judges who work hard, aggressively manage their docket, treat all litigants with respect, carefully adhere to court rules, and act impartially.

**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: As a trial judge, it would be my responsibility to follow binding case precedent from the Supreme Court and Eighth Circuit with respect to interpretation of the Constitution. The Supreme Court has found that public understanding of text around the time of enactment plays a critical role in Constitutional interpretation, *District of Columbia v. Heller*, 545 U.S. 570, 605 (2008), and I would follow that and other binding 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: If confirmed as a district court judge, I would not overrule established precedent, but would follow the precedent established by higher courts.

**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: As a district court judge, it would be my obligation to follow case precedent adopted by the United States Supreme Court, including *Garcia*. My personal feelings, if any, would be set aside in order to follow precedent.

**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 decided several cases discussing the breadth and application of the Commerce Clause, and in particular, its application to the regulation of non-economic activity. Under court precedent, the Commerce Clause empowers Congress to regulate: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce or people or things in interstate commerce; and (3) activity that has a substantial effect on interstate commerce. See, e.g., *United States v. Morrison*, 529 U.S. 598 (2000), *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed and presented with a case concerning the Commerce Clause, I would apply the facts of the case presented to the Supreme Court's analysis in *Morrison*, *Lopez*, and any other applicable Supreme Court precedent.

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

Response: The power of the President to issue executive orders or executive actions and the limits on the authority of the President to act through executive orders or executive actions, can be found in the Acts of Congress and in the United States Constitution. See e.g., *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), *Medellin v. Texas*, 552 U.S. 491 (2008). If confirmed, I would apply these and other pertinent Supreme Court precedent to any case pertaining to the limits of executive power.

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

Response: A right is fundamental for purposes of the substantive due process doctrine when it is "deeply rooted in the nation's history and traditions." See *Washington v. Glucksberg*, 521 U.S. 702 (1997). As a district judge, I would follow all applicable Supreme Court precedent involving alleged infringement of fundamental rights.

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

Response: The Supreme Court has held that strict scrutiny is appropriate in only a narrow set of cases, such as cases involving classifications based on race, *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) and that an intermediate scrutiny is appropriate in another narrow set of cases such as those involving classifications based on gender. *United States v. Virginia*, 518 U.S. 515 (1996). See also *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) wherein the court discusses when a classification should be subject to heightened scrutiny. As a district court judge, I would follow Supreme Court precedent concerning which classifications require a 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 have not formed any expectation concerning the use of racial preferences fifteen years from now. However, as a district judge, I will follow Supreme Court precedent concerning the legality of such racial preferences, including the precedent established by *Grutter v.*

*Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).