

Senator Chuck Grassley
Questions for the Record
Christopher Droney, U.S. Court of Appeals for the Second Circuit

- 1. At a speech in 2005, Justice Scalia said, “I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says.” Do you agree with Justice Scalia?**

Response: Judges must adhere to the text of the Constitution and not permit their personal views to influence their interpretation and application of the Constitution. The personal views of judges as to whether the Constitution should be amended are also not relevant to their duties of applying and interpreting the Constitution.

- 2. At your hearing you said that it is “appropriate to look to legislative history” when interpreting statutes.**
 - a. In your view, are there certain circumstances when it would be inappropriate to look to legislative history? If so, what are those circumstances?**

Response: It is inappropriate to consider legislative history if the meaning of the statute is plain and clear.

- b. Do you believe that clearly conflicting legislative history can trump the unambiguous plain meaning of a statute? Please explain your answer.**

Response: No. If the statute is plain and unambiguous it would be unnecessary and inappropriate to consider its legislative history.

- 3. At your hearing I asked you about structural injunctions and the Supreme Court’s recent ruling in *Brown v. Plata*. You said that were times when courts should intervene and grant structural injunctions. What factors would you look to in determining whether a structural injunction is appropriate?**

Response: Structural injunction cases typically involve “sensitive federalism concerns,” as such matters often involve areas of important state responsibility. Horne v. Flores, 129 S.Ct. 2579, 2593 (2009). District Courts are also ill-equipped to take over the administration of large state agencies, as such supervision requires expertise in areas often unfamiliar to District Judges. However, if federal rights are continuously violated on a system wide basis and the agency or department fails to address those violations over a long term, the federal courts must still “vigilantly enforce federal law.” Horne, 129 S.Ct. at 2594. The Supreme Court in Horne, Brown v. Plata and other decisions has set forth the criteria for District Court involvement in such situations, and lower federal courts are bound by those decisions. Threshold statutory requirements, such as those in the Prison Litigation Reform Act of 1995 in Brown v. Plata, must also be met before judicial intervention is appropriate.

- 4. Do you believe it ever appropriate for a judge to consult foreign law, when determining the meaning of the United States Constitution?**

Response: No

- 5. A recent Time magazine article said that “If the Constitution was intended to limit the federal government, it sure doesn’t say so.” Do you agree with this statement? Please explain your answer.**

Response: I do not agree with that statement. The powers delegated to the three branches of government in the Constitution are limited. As James Madison wrote in Federalist 45, “The powers delegated by the proposed Constitution to the federal government are few and defined.”

- 6. Do you believe that the Second Amendment is an individual right or a collective right?**

Response: I believe that the Second Amendment is an individual right, as held by the U.S. Supreme Court in District of Columbia v. Heller, 554 U.S. 570 (2008), and McDonald v. City of Chicago, 130 S.Ct. 3020 (2010).

- 7. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

Response: The Supreme Court did not specify the standard of scrutiny to be applied to a federal or state law in the Heller and McDonald decisions, but because the Court concluded that the right to keep and bear arms is fundamental, a heightened level of scrutiny would apply to any law that burdens that Second Amendment right.

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

Response: The most important attribute of a judge is to faithfully and fairly apply the law in all cases. I believe I possess that attribute.

- 9. 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 the appropriate temperament of a judge includes the qualities of fairness, patience, open-mindedness, lack of bias, and diligence. I believe I meet that standard.

- 10. 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.

- 11. 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: If the matter concerned the interpretation of a statute, I would first look to the text of the statute itself. If its meaning was not plain from its text, I would then look to its legislative history and relevant decisions of the U.S. Supreme Court and U.S. Court of Appeals for the Second Circuit for guidance. Thereafter, I would consider decisions of other federal Courts of Appeal. The principles that guide me include stare decisis and not allowing my personal views to be involved.

- 12. 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 still apply the binding decisions of the Supreme Court and Circuit Court. I would not allow my personal views to interfere with that duty.

- 13. 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 only declare a statute enacted by Congress unconstitutional if it violates a provision in the Constitution, or if the Congress exceeded its powers as set forth in the Constitution. Federal courts must also apply the precedents of the Supreme Court and higher federal courts in making that determination. Finally, federal courts must only make that determination if they have jurisdiction over the matter and it is justiciable.

- 14. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?**

Response: U.S. Courts of Appeal may overturn precedent only by sitting en banc. Panels of those courts are otherwise bound by stare decisis. Factors to consider when deciding whether en banc review is appropriate include whether the issue is of exceptional importance and the need for uniformity of the court's decisions.

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

Response: I received these questions on June 29, 2011. I then drafted responses. I reviewed my responses with a representative of the Department of Justice and asked him to forward my responses to the Committee.

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

Response: Yes.