

Questions for the Record from Senator Maizie Hirono
for Donald C. Coggins, Jr.

1. Why do you want to be a federal judge? What in your personal or professional background has most motivated you to want to serve?

Response: During my career as a trial lawyer, for more than 30 years I have had the privilege of appearing in state and federal trial courts across the state of South Carolina, as well as a couple in North Carolina and Tennessee. During that time, I have appeared before numerous judges who have engendered respect for the rule of law through their fairness, impartiality, and courtesy toward all those persons participating in the legal process in their courtrooms. I believe that I can be such a judge and that it is more important than ever to have such judges so as to maintain the confidence of the American public in our judicial system and the rule of law.

2. What do you believe is the fundamental role of a federal judge?

Response: I believe the fundamental role of a federal judge is to fairly and impartially apply the Constitution and laws of the United States, as well as applicable legal precedent, to the facts of each and every matter coming before the court.

3. (a) Can you tell me about the pro bono or public service work you've done that you're proudest of?

Response: Throughout my career, I have tried to be active both in handling pro bono legal matters as well as serving with charitable or public service organizations outside of my law practice. I am most proud of those occasions where I have had the opportunity to make a personal difference in someone's life. Whether assisting with a pro bono adoption to rescue a child from a life of abuse and neglect or volunteering with an agency dedicated to keeping homeless families intact and providing them with shelter until they can get back on their feet, I never tire of opportunities to directly impact the lives of persons in need.

- (b) Why did you undertake it?

Response: I have undertaken pro bono cases and other public service throughout my career because it is simply the right thing to do. I believe that as an attorney I have a professional and ethical obligation to give back to my community.

- (c) How do you think it improved the lives of your clients or the people you served?

Response: The immediate, tangible effects of helping a neglected child be adopted into a loving home or providing food and shelter to a homeless family are readily apparent. However, I think that a more subtle, yet larger, effect upon people served by the many selfless volunteers across our country is to restore those persons' faith in their fellow citizens and their nation as a whole.

4. (a) Can you explain, in general terms, how you would go about analyzing a constitutional challenge to a statute?

Response: In general, a district court judge should always try to resolve a matter without reaching the constitutionality of the applicable statute. In the case of a direct challenge to a statute, I would look to the plain language and ordinary meaning of the statute in question as well as the meaning of the words as used by the framers in the applicable provision(s) of the Constitution. I would then strictly adhere to any prior interpretation of the statute or constitutional provision in question by the Supreme Court and the applicable Court of Appeals.

- (b) What process would you follow?

Response: As indicated above, I would follow the plain language of the Constitution or statute as interpreted by the Supreme Court and the circuit court.

- (c) When would you rely on the "original meaning" of the statute or the constitutional provision, and when would you instead rely on traditions developed since the enactment, precedent, or current norms?

Response: My job as a district court judge would be to discern what the words in the Constitution or statute mean and then apply them to the case at hand. I am bound to follow all precedent of the Supreme Court and the applicable Court of Appeals in that regard. To give any consideration to my understanding of "traditions" or "current norms" would be to improperly insert my personal opinion into the process.

5. As you know, the 14th Amendment's Equal Protection Clause states:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Please explain your understanding of the current constitutional prohibitions against sex discrimination. Does the Equal Protection Clause of the 14th Amendment to the U.S. Constitution prohibit discrimination on the basis of gender or sexual orientation?

Response: If I am fortunate enough to be confirmed and a case involving alleged discrimination on the basis of gender or sexual orientation were to come before me, I would carefully research the applicable precedents of the Supreme Court and the Fourth Circuit Court of Appeals and apply them fairly and impartially to the facts of the case at hand. My personal opinions would be irrelevant to the process.

6. In 1992, in *Planned Parenthood v. Casey*, the Supreme Court re-affirmed the core holding of *Roe* that the right to an abortion is constitutionally protected. The Court held that these decisions are protected because they are among “the most intimate and personal choices a person makes in a lifetime.” Do you believe the Constitution protects the right of people to make “intimate and personal” decisions?

Response: Respectfully, my personal beliefs or views are irrelevant to my duties as a district court judge. To state them here would mistakenly imply that I might decide a case based upon something other than the applicable law and facts. The majority opinion in *Planned Parenthood* represents the binding precedent of the Supreme Court. I would always faithfully apply that decision and any applicable precedent from the Fourth Circuit on this issue.

7. When Congress reauthorized the key expiring provisions of the landmark Voting Rights Act in 2006 it did so with a nearly unanimous vote. Before reauthorizing the protections of Section 5 in jurisdictions with a long history of discrimination in voting, the Judiciary Committee alone held nine hearings on the Voting Rights Act. The thousands of pages of material reviewed by the Senate, together with the record developed in a dozen hearings in the House, clearly established the continuing need for Section 5. And yet, in *Shelby County*, the Roberts Court ignored this evidence and the Court’s long precedent, making its own determination about the value of the extensive evidence reviewed by Congress. I am not asking you to pass judgement on the Supreme Court’s opinion, but as a general matter, please discuss the concerns raised by the decision about the limits of judges as policy-makers and the problems that arise when a Court steps outside of the judicial role and acts as a legislative body.

Response: A district court judge is duty bound to follow the binding precedent of the Supreme Court. It would be wholly inappropriate for me to critique the Court’s opinion or criticize its reasoning in these proceedings. As indicated above, regardless of my personal views, I would always follow the binding precedent of the Supreme Court and the Fourth Circuit Court of Appeals in every case.

8. The Supreme Court’s decision in *Korematsu v. United States* has never been overturned, but has joined the short list of most regrettable decisions in the history of

the Supreme Court of the United States. (a) Does *Korematsu* hold any precedential value?

Response: It is my understanding that while *Korematsu* has not been technically overruled, it has been limited to its specific facts.

(b) Could it be relied upon today to justify efforts by the federal government to discriminate on the basis of race or national origin?

Response: While a party might cite to the *Korematsu* decision, it would be hard for me to imagine any circumstance in which it would provide any persuasive authority given that it has never been cited favorably by the Supreme Court and has fallen into near universal disrepute. Beyond that, it would be inappropriate for me to speculate or comment about this or any other issue that might conceivably come before me at a future date.

9. President Trump's decision to pardon someone who defied the order of a federal court and then convicted of criminal contempt of court, shows that he has little respect for the role the Judicial branch of the United States government plays in our system of checks and balances. What remedies are available should the President or Executive Branch disregard a ruling of the Supreme Court or a lower federal court? I am not asking you to speculate on any possible case that could come before you. I am simply asking you to discuss the possible available remedies.

Response: One of the most fundamental concepts of the Constitution is the separation of powers between the three branches of government. It would never be appropriate for the Executive Branch to disregard a ruling of the Supreme Court or a lower federal court. However, I would expect both the Executive Branch and the Legislative Branch to respect the judiciary's constitutional role and to comply with court orders.