**Senator Grassley**
**Questions for the Record**

**Donald C. Coggins, Jr.,**
**Nominee, U.S. District Judge for the District of South Carolina**

1. **According to your questionnaire, you have had minimal experience in criminal matters. As a district judge, you will have to preside over both civil and criminal matters.**

   a. **Please describe your experience in matters of criminal law.**

      Response: During the early years of my practice, I handled a number of criminal matters in state courts including minor drug cases, property crimes, weapons charges, and driving under the influence. In the last 25 years, while I have not directly handled criminal cases, I have represented crime victims in related civil litigation. As part of that representation, I have often accompanied such clients to meetings with prosecutors, victim assistance offices, and criminal court hearings.

   b. **If confirmed, what steps will you take to familiarize yourself with federal criminal law and procedure?**

      Response: Since my nomination, I have reviewed several books and other resources regarding criminal law and procedure, including a careful review of the Federal Sentencing Guidelines. I have also attended and observed a number of criminal proceedings in the District of South Carolina. The district judges in those proceedings were kind enough to notice my presence and speak with me afterwards about the process as well as answer my questions. If confirmed, I will continue my study of federal criminal law and procedure, fully utilize the resources and participate in the programs offered by the Federal Judicial Center, and continue to avail myself of the wise counsel of the experienced judges of the District of South Carolina.

2. **As amended on December 1, 2015, Federal Rule of Civil Procedure 26(b)(1) defines the "scope of discovery" in litigation matters as "any nonprivileged matter that is relevant to any party's claim or defense *and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.*"**

   **Chief Justice Roberts explained in his 2015 Year-End report that these amendments "make a significant change, for both lawyers and judges."**

   a. **What is the effect of this amendment to Rule 26(b)(1)?**

Response: This amendment places a responsibility upon the litigants to engage at an early stage to determine what discovery is reasonable and necessary given the issues involved based upon a common sense proportionality analysis. It also provides the judge with a greater opportunity for influence on the scope of discovery at an early stage. Ideally, these matters would be addressed in the parties' discovery plan as part of the Rule 26(f) conference or an initial case management conference with the court.

**b. If confirmed, how would you assess whether a discovery request is "proportional to the needs of the case"?**

Response: In assessing a discovery request as being "proportional to the needs of the case," I would engage with the parties to understand and determine the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the information requested to resolving the issues, and whether the burden or expense of the requested discovery outweighs its likely benefit.

**c. How, if at all, would your assessment of whether a discovery request is "proportional to the needs of the case" differ from your view of the scope of discovery under the prior version of the rule?**

Response: Under the prior version of the rule, the scope of discovery extended to any matter relevant to a claim or defense, even if the information sought was not admissible at trial, as long as the discovery appeared reasonably calculated to lead to the discovery of admissible evidence. If a party felt unduly burdened by a discovery request, it would have to rely upon the court to impose limits, after the fact, pursuant to Federal Rule of Civil Procedure 26(b)(2)(c). Now, however, the new rule places the responsibility on the parties at the outset to tailor their requests to the requisites of the specific case. The new rule elevates the significance of the proportionality factors in this process and provides guidance in the crafting of the discovery plan for the case.

**3. The Chief Justice's 2015 Year-End report also noted reports from litigants that "[a] judge who is available for prompt resolution of pretrial disputes saves parties time and money."**

**As amended on December 1, 2015, Rule 16 requires a district judge to issue a scheduling order within "the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared." This amendment shortened both applicable deadlines by 30 days.**

**a. Please explain the approach you will take to case management and the tools you will use to manage cases in a just and efficient manner if you are confirmed.**

Response: If confirmed, I will utilize the initial scheduling order and case management procedures provided by the Local Rules in the District of South Carolina. I will ensure that the parties engage in the Rule 26(f) conference in a timely fashion and will follow up with them on issues of scheduling and anticipated necessary discovery. I will emphasize my availability for conferences to resolve discovery disputes and other preliminary matters as the case moves forward. When formal motions are filed, I will see that they are promptly heard and decided to avoid delay in the progress of the litigation.

**b. Please explain and describe any effect the 2015 amendments to the Federal Rules of Civil Procedure will have on your approach to case management if confirmed.**

Response: I believe these amendments emphasize the necessity for effective case management from the outset to facilitate the efficient administration of justice. If confirmed, I will be actively involved in monitoring the progress of cases on my docket and will handle all matters that come before me as efficiently as possible.

**4. As you know, parties frequently propose protective orders for the approval of the district judge during the course of discovery. The 2015 amendments to the Federal Rules of Civil Procedure included a change to Rule 26(c)(1)(B) adding "allocation of expenses" to the list of items that may be included in a protective order.**

**a. How would you evaluate cost-allocation mechanisms included in proposed protective orders, if confirmed?**

Response: I would evaluate cost-allocation provisions in proposed protective orders on a case by case basis to protect a party from undue burden or expense. Unfortunately, sometimes parties seek discovery which is primarily calculated to drive up the cost of litigation for the opposing party. Cost shifting, in whole or in part, to the party seeking the discovery will often cause a re-evaluation of the true necessity of the request.

**b. Under what circumstances, if any, would you consider ordering allocation of expenses pursuant to Rule 26(c)(1)(B) absent suggestion of the parties?**

Response: The proportionality requirement for the scope of discovery under the amended rule would be applicable to any order allocating expenses. The relevance of the information sought, the amount in controversy, the relative access to the information, the parties' resources, and a cost benefit analysis of the information sought should be considered.

**c. Do you understand the 2015 amendment to Rule 26(c)(1)(B) to confer upon the district court a new authority or obligation to manage discovery costs through cost allocation?**

Response: The Committee Notes on the amendment explain that the cost-allocation provision does not confer upon the district court a new authority or obligation to manage discovery costs. Where this authority was held to be implicit in the former rule, it is now expressly recognized in the language of the amended rule.

**d. How, if at all, do you understand the cost-allocation provisions of Rule 26(c)(1)(B) to relate to those found in Rule 37?**

Response: The cost-allocation provisions of Rule 26(c)(1)(B) allow the court to, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense with respect to requested discovery. The cost assessment provisions of Rule 37 are in the nature of sanctions as a result of a party's misconduct in some way. Both provisions promote the efficient and just resolution of pre-trial matters by discouraging inappropriate or harassing conduct.

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

Response: The most important attribute of a judge is integrity. A judge must be completely fair and impartial in dealing with all persons having business with the court in order for the public to have confidence in the rule of law. I believe that I have demonstrated throughout my career that I possess this attribute.

**6. 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 the appropriate temperament of a judge is that of a humble public servant. A judge should be courteous and open-minded toward all litigants, counsel, and court staff. A judge should treat everyone with fairness and respect. I believe that I meet this standard.

**7. 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: If confirmed, I am fully committed to faithfully applying the precedent of the Supreme Court and the Fourth Circuit without regard to any personal feeling or opinion.

**8. 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 confirmed and I am presented with such a case, I would first look to the plain and ordinary meaning of the text at issue. If the language involved is clear, I would apply its plain meaning. If the language is ambiguous, I would look to the recognized canons of statutory construction as established by the Supreme Court. If further analysis is required, I would look to analogous cases decided by the Supreme Court and the Fourth Circuit.

**9. 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: If confirmed, I would always faithfully apply the precedent of the Supreme Court and the Fourth Circuit. My personal opinion regarding precedential authority is completely irrelevant to any decision.

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

Response: The statutes enacted by Congress are presumed to be constitutional. A court should always try to resolve the dispute before it without reaching constitutional issues, if at all possible. However, if a statute clearly violates the plain language of the Constitution or exceeds congressional authority, it should be declared unconstitutional.

**11. 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. It is never proper for judges to rely on foreign law or views of the "world community." Judges should rely on the Constitution, the statutory laws of the United States, and the binding precedent of the Supreme Court and Circuit Court to decide cases.

**12. 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: If confirmed, I will faithfully apply the statutes of the United States and the precedent of the Supreme Court and Fourth Circuit to the cases before me without regard to my personal feelings or beliefs. My reputation for integrity, honesty, and fair dealing as an attorney and officer of the court for more than thirty years provides assurance that I will honor this commitment.

**13. 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: For more than thirty years as a private attorney, I have set aside personal feelings about clients in order to provide them with professional and zealous representation in all types of legal matters. If confirmed, I am committed to treating all litigants with courtesy and respect. I will continue to set aside any personal opinions and will decide all matters before me in a fair and impartial manner based solely on the application of controlling law to the facts presented.

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

Response: If confirmed, I will utilize the case management tools and procedures currently in use in the District of South Carolina. In addition, I will have early case management conferences, remain engaged with counsel through the discovery process, facilitate the required ADR process in civil cases, and utilize the assistance of magistrate judges where appropriate. In consultation with counsel, I will establish scheduling orders with realistic deadlines and a firm trial date. I will promptly decide and issue timely orders on all motions and preliminary matters as they are raised.

**15. 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. Judges play a vital role in controlling the pace and conduct of litigation before them. I would play an active role in controlling the pace of the litigation through the steps outlined in my response to the preceding question. I would require civility and courtesy by all litigants and counsel in the conduct of any litigation.

**16. 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: In every case that comes before me I will make sure that I have a clear understanding of the facts and arguments presented by the litigants. If I have questions, I will not hesitate to request additional submissions or oral argument. Once I am satisfied that I have a clear understanding of the factual issue(s), I will do the necessary research to determine the controlling law and then apply it to the facts. Due to my lack of experience in the federal criminal arena, I expect that the criminal docket will be the most difficult part of this transition. However, I will diligently continue to develop my knowledge in this area as indicated above.

**17. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?**

Response: I do not agree with this statement as presented here. Judges should decide cases fairly and impartially by the application of controlling law to the facts presented, without regard to the judge's personal views or values.

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

Response: I received these questions on the evening of June 28, 2016 from the Department of Justice, Office of Legal Policy. I submitted an initial draft of my responses to that office for review before finalizing my answers and submitting them to the Committee.

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

Response: Yes.

**Senator Thom Tillis**
**Questions for the Record**

**Donald C. Coggins, Jr.**
**Nominee, U.S. District Judge for the District of South Carolina**

1. **Some individuals have argued that the United States Constitution is a "living document," subject to different interpretations as society changes. Do you subscribe to this point of view?**

   Response: I do not subscribe to this point of view. The United States Constitution is a timeless framework of enduring principles which should be interpreted according to the plain language of its text and the binding precedent of the United States Supreme Court and the Fourth Circuit Court of Appeals.

2. **What role, if any, should societal pressure or popular opinion play in interpreting statutes or the United States Constitution?**

   Response: Societal pressure or public opinion should play no role whatsoever in interpreting statutes or the United States Constitution. If confirmed, I will look to the plain language of the text in question and faithfully apply binding precedent of the Supreme Court and the Fourth Circuit.

3. **Please define judicial activism. Is judicial activism ever appropriate?**

   Response: Judicial activism occurs when a judge assesses a case with a desired result or agenda in mind and crafts the decision to achieve that result or agenda. Judicial activism is never appropriate. Each case should be decided by applying the law in a fair and even-handed manner to the facts of that case.

4. **When, if ever, is it appropriate for a federal court to rule that a statute is unconstitutional?**

   Response: The statutes enacted by Congress are presumed to be constitutional. A court should always try to resolve the dispute before it without reaching constitutional issues, if at all possible. However, if a statute clearly violates the plain language of the Constitution or exceeds congressional authority, it should be declared unconstitutional.

5. **What is a fundamental right? From where are these rights derived?**

   Response: Fundamental rights are those basic rights of citizens which are primarily derived from the Bill of Rights and the Constitution. The Supreme Court has defined fundamental rights as "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.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted).

6. **Do you believe the First Amendment or any other provision of the United States Constitution protects private citizens and businesses from being required to perform services that violate their sincerely held religious beliefs?**

   Response: The United States Supreme Court has stated that, "[t]he principle that government may not enact laws that suppress religious belief or practice is so well understood that few violations are recorded in our opinions." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 523 (1993). More recently, the Court specifically affirmed that private businesses, and the citizens who own them, shall not be substantially burdened in the exercise of their sincerely held religious beliefs. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). If confirmed, I would apply this and all applicable Supreme Court and Fourth Circuit precedent to any case presenting such a question.

7. **What level of scrutiny is constitutionally required when a statute or regulation related to firearms is challenged under the Second Amendment of the United States Constitution?**

   Response: The Supreme Court has held that some heightened level of scrutiny beyond the rational basis test is required, but the Court has declined to be more specific to date. *See District of Columbia v. Heller*, 554 U.S. 570 (2008). On February 4, 2016, the Fourth Circuit held that a Maryland law seeking to limit access to certain "assault weapons" and larger capacity detachable magazines was subject to strict scrutiny in overturning the decision of the district court which had applied intermediate scrutiny to the challenge. *See Kolbe v. Hogan*, 813 F.3d 160 (4th Cir. 2016), *reh'g en banc granted*, 636 F. App'x 880 (4th Cir. Mar. 4, 2016). The Fourth Circuit explained that "any law that would burden the fundamental, core right of self-defense in the home by a law-abiding citizen would be subject to strict scrutiny." *Id.* at 181 (internal quotations omitted). If confirmed, I would apply all applicable Supreme Court and Fourth Circuit precedent to any case presenting such a question.

8. **Do you believe it is constitutional for states to require voters to show photo identification before being eligible to cast their vote?**

   Response: The United States Supreme Court has held that states may require voters to show photo identification before casting their ballot. *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). If confirmed, I would apply this and all applicable Supreme Court and Fourth Circuit precedent to any case presenting such a question.

9. **One challenge you will face as a federal judge is managing a demanding caseload. If confirmed, how will you balance competing priorities of judicial efficiency and due**

**process to all litigants involved in the cases on your docket? Will you give certain cases priority over others? If so, please describe the process you will use to make these decisions.**

Response: If confirmed, I will diligently strive to manage my caseload through the rules and procedures already available in the District of South Carolina. To facilitate a full and fair opportunity for every litigant to be heard, I will have early case management conferences, remain engaged with counsel through the discovery process, facilitate the required ADR process in civil cases, and utilize the assistance of magistrate judges where appropriate. In consultation with counsel, I will establish scheduling orders with realistic deadlines and a firm trial date. Of necessity, I will give priority to matters requiring prompt attention such as Speedy Trial Act issues or cases involving requests for immediate injunctive or declaratory relief.

**10. Do you believe the death penalty is constitutional? Would you have a problem imposing the death penalty?**

Response: The Supreme Court has held that the death penalty is constitutional. If confirmed, I will faithfully follow this and all established precedent.