

**Senator Grassley
Questions for the Record**

**Scott L. Palk,
Nominee, U.S. District Judge for the Western District of Oklahoma**

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

Response: I believe the most important attribute of a judge is integrity. In the context of a judicial quality, integrity encompasses the traits of respect, humility, and a dedication to fairness. I believe that I have demonstrated these qualities over the course of my career, and will continue to do so if confirmed.

2. 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 should demonstrate the highest levels of patience, respect, and courtesy at all times, even in the face of challenging circumstances. It is of paramount importance that a judge serve as the highest example of professionalism and civility. I believe that I meet that standard, and have aspired to do so throughout my over twenty years of trial practice.

3. 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: I am thoroughly and faithfully committed to apply any United States Supreme Court precedent and the controlling authority of the Court of Appeals for the Tenth Circuit. My personal feelings regarding any precedents would have no place in any judicial role in which I was a participant.

4. 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 text of the statute. If the text was clear and unambiguous, I would apply the rules of statutory construction and follow the plain language of the statute. If the language of the text presented ambiguity, I would look to guidance from analogous cases decided by the United States Supreme Court and the Court of Appeals for the Tenth Circuit.

- 5. 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 of the Supreme Court or Court of Appeals. A district judge does not have the discretion to substitute his/her judgment for that of a higher court.

- 6. 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. Initially, a district court should attempt to resolve a case without addressing constitutional issues. If constitutional issues must be addressed, the court should declare a statute unconstitutional only if Congress has exceeded its constitutional authority in enacting the statute or the statute violates a constitutional provision.

- 7. 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. I do not believe there is ever a circumstance in which foreign law or the views of the “world community” should be considered in interpreting the Constitution.

- 8. 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 have demonstrated a commitment and dedication to the rule of law throughout my career. I have never allowed personal opinions or feelings, political ideology or motivation to influence my professional conduct. If confirmed, I will faithfully follow the text of the law, guided by the precedents of the United States Supreme Court and the Court of Appeals for the Tenth Circuit.

- 9. 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 have served as a public officer of the court for over twenty years. During that time, I have never allowed my personal views or opinions to influence my professional conduct. If confirmed, I am committed to continue to demonstrate absolute objectivity without the influence of personal opinion.

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

Response: I would manage my caseload in accordance with the federal rules of procedure, guided by the practices and local rules for the Western District of Oklahoma. I would

establish firm and reasonable deadlines for the efficient disposition of cases, while issuing rulings promptly in an effort to promote the steady progress of cases. I would also rely on the guidance and institutional knowledge of current judges and courthouse staff.

- 11. 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, as to both pace and conduct. Regarding pace, I would promote a prompt and reasonable pace of litigation as described in the previous answer. As to conduct, I believe a district judge has an obligation to set an example for all parties. I would demonstrate the highest regard to civility and professionalism, and require the same of all counsel and litigants.

- 12. 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: As a state and federal prosecutor for over twenty years, my clients have been the public at large. While protecting the rights of the public, I was also committed to protecting the rights of the defendant, presenting evidence and argument within the confines of the Constitution, statutes, and controlling precedent. If confirmed, I will make every decision objectively, carefully considering the facts presented and applying the Constitution, statutes, and controlling precedent. As the majority of my career has been in the area of criminal law, I expect that the most difficult part of my transition would be in the area of civil law. I believe that, given my work ethic and dedication to fairness, I will be able to effectively manage this transition.

- 13. 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.” While you may not be familiar with the context of this statement, do you agree with this statement?**

Response: I believe that judicial decisions should be made strictly upon reliance of statutory text, and controlling precedents of the United States Supreme Court and the appropriate circuit court of appeals.

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

Response: I received these questions from the Department of Justice, Office of Legal Policy, on April 29, 2016. I reviewed all of the questions, reflected on my personal thoughts as to each, researched questions as necessary, then personally drafted my answers. I submitted an initial response to these questions to the Office of Legal Policy on

May 2, 2016. After reviewing my responses with the Office of Legal Policy, I authorized the submission of the final document to the Senate Judiciary Committee.

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

Response: Yes.

Questions for Judicial Nominees

Senator Ted Cruz

Responses of Scott L. Palk

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: While I do not have experience serving as a judge, I believe that my philosophy is that of judicial restraint and that I should faithfully apply the law in accordance with the holdings of the United States Supreme Court and the Court of Appeals for the Tenth Circuit.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

Response: I believe a judge should make decisions with strict adherence to prior decisions of the United States Supreme Court and controlling Courts of Appeals, without regard to his or her personal views.

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

Response: As a state and federal prosecutor for over twenty years, I would not consider myself a constitutional scholar, particularly in those areas of law unrelated to my practice. I have not had occasion to study the full body of United States Supreme Court decisions during those terms, and would not be in a position to express an informed opinion whether any case was wrongly decided. Should I be confirmed, I believe it would be inappropriate to allow my personal views regarding the correctness of a decision of the United States Supreme Court to interfere with the strict adherence to controlling precedent.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: I have the greatest respect for the work of the United States Supreme Court as an institutional body. With my knowledge of the justices being limited to general public information and opinions, I have no personal insight into the

individual professional traits of each. As such, I would find it difficult to select a justice I would choose to emulate individually over another.

5. 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, other)?

Response: The United States Supreme Court has considered the original public meaning of the words of the Constitution in cases involving constitutional interpretation, for example, in the interpretation of the Second Amendment. *See District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008). If confirmed, I will follow those precedents of the United States Supreme Court and Court of Appeals for the Tenth Circuit.

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

Response: Constitutional rulings and doctrines of foreign courts and international tribunals should have no role in the interpretation of the United States Constitution and laws.

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

Response: The limited jurisdiction of federal courts dictates that the courts have no role in the administration of non-judicial institutions, other than as directed by precedents of the United States Supreme Court and controlling circuit courts of appeals.

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

Response: To the extent the theory of a living Constitution suggests courts take into consideration the dynamic views of a contemporaneous society when engaging in constitutional interpretations, I believe the theory to be problematic. Acts of Congress are presumed to be constitutional, presumptions which must be consistent and predictable and not subject to evolving interpretations. In that sense, I believe the doctrine of judicial restraint is paramount and should be strictly adhered to. If confirmed, I will follow the precedents of the United States Supreme Court and Court of Appeals for the Tenth Circuit.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: As I have not had occasion to fully contemplate each decision over that period of time, I am not aware of a United States Supreme Court decision I favor more than another. I believe every binding United States Supreme Court decision is of the highest legal significance and all must be applied equally.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: I have not had occasion to fully contemplate each decision over that period of time, and I am unable to express any opinion as to any judicial philosophy that may have influenced a decision. If confirmed, I believe I have an obligation to faithfully follow the precedents of the United States Supreme Court and the Court of Appeals for the Tenth Circuit, without regard to any belief I have as to any judicial philosophy that may have influenced how those cases were decided.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: Natural law has a number of definitions, many of which include provisions that are not based upon the United States Constitution or statutory law. Natural law by any of these definitions has no place in interpreting the Constitution or statutes. If confirmed, I would faithfully follow the precedents of the United States Supreme Court and the Court of Appeals for the Tenth Circuit.

Congressional Power

12. 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 faithfully follow all binding precedents of the United States Supreme Court and the Court of Appeals for the Tenth Circuit regardless of any personal agreement or disagreement with those decisions, including the holding in *Garcia*.

13. 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 addressed the regulatory power of Congress. In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia wrote, in a concurring opinion, “Congress may regulate even noneconomic activity if that regulation is a necessary part of a more general regulation of interstate commerce.” Justice Scalia further noted: “Congress may regulate noneconomic intrastate activities only where the failure to do so ‘could ...undercut’ its regulation of interstate commerce.” *Id.* at 38. See also *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would faithfully follow the precedents of the United States Supreme Court in determining the reach of the Commerce Clause, as well as those of the Court of Appeals for the Tenth Circuit.

14. What limits, if any, does the Constitution place on Congress’s ability to condition the receipt and use by states of federal funds?

Response: While my professional experience has not included legal analysis on this subject, and I have not independently analyzed the details of the holding, I am aware that the United States Supreme Court has “recognized limits on Congress’s power under the Spending Clause to secure state compliance with federal objectives.” See *NFIB v. Sebelius*, 132 S. Ct. 2566, 2602 (2012). See also *South Dakota v. Dole*, 483 U.S. 203 (1987). If confirmed and faced with an issue of this nature, I would follow the applicable precedents of the United States Supreme Court and Court of Appeals for the Tenth Circuit.

15. Is Chief Justice Roberts’ decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: As indicated in the previous answer, I have not thoroughly analyzed the detailed impact of the holdings in *NFIB*. I am aware that courts and legal scholars have engaged in discussions about whether the portions of Chief Justice Roberts’ opinion touching upon the Commerce Clause are dicta or binding precedent.

Presidential Power

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

Response: While my professional experience has not included legal analysis in the subject area of Presidential powers, I am aware that the powers of the President are limited to those provided to him or her by the United States Constitution or an act of Congress. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: As indicated above, my professional experience has not included legal analysis on this subject. The United States Supreme Court has held Presidential power is limited to that provided in the United States Constitution or an act of Congress, and provided a framework for evaluating those powers. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Individual Rights

18. When do you believe a right is “fundamental” for purposes of the substantive due process doctrine?

Response: The United States Supreme Court has held that “fundamental rights” are those “rights and liberties which are objectively, deeply rooted in this Nation’s history and tradition”. *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted).

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

Response: While my professional experience has not included legal analysis in the subject area, I have conducted limited research in the preparation of these answers. When considering Equal Protection Clause claims, the United States Supreme Court has held that classifications that burden a fundamental right or that are based on race, alienage, national origin, gender, or illegitimacy are subject to heightened scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

20. 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: Although I have no personal opinion as to the necessity or length of time referred to in the question, if confirmed, I will faithfully apply the controlling precedent decided by the United States Supreme Court in *Grutter* and its progeny in deciding the constitutionality of admissions-based policy issues.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: The United States Supreme Court has ruled that any such policies are subject to strict scrutiny analysis. *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411, 2419 (2013). In order to survive judicial review, such policies must be narrowly tailored to fulfill a compelling governmental interest.

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: The United States Supreme Court has held the Second Amendment is an individual right. While the Court indicated the right was not unlimited, the ruling held that an individual has a right to possess a firearm for lawful purposes, including self-defense in the home. *District of Columbia v. Heller*, 554 U.S. 570 (2008). The United States Supreme Court has not yet addressed those rights with respect to a public space, nor has a consensus been reached among the circuit courts of appeals.

Written Questions of Senator Jeff Flake
U.S. Senate Committee on the Judiciary
Judicial Nominations
April 20, 2016

Responses of Scott L. Palk
Nominee, U.S. District Judge for the Western District of Oklahoma

- 1. What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?**

Response: The text and plain language of the statute is the first consideration in statutory interpretation. In the event of ambiguity, decisions in analogous cases of the United States Supreme Court and the United States Court of Appeals for the Tenth Circuit should be considered for guidance. While not controlling, interpretations from decisions of other circuit courts of appeals may also be considered. Absent guidance from any of the foregoing, a judge may look to legislative history, although those circumstances would certainly be rare.

- 2. What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: The Tenth Amendment states that powers which are not “delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” If confirmed, I would apply the 10th Amendment in scope as determined by the holdings of the United States Supreme Court and the Court of Appeals for the Tenth Circuit.

- 3. Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?**

Response: I have insufficient experience with this doctrine to opine as to how the doctrine may impact the ability of litigants to obtain relief. Any personal opinion I may have, if any, would have no role in my application of the law to the facts. If confirmed, I would follow the precedents regarding standing as determined by the United States Supreme Court and the Court of Appeals for the Tenth Circuit.

Questions for the Record
Senate Judiciary Committee
Senator Thom Tillis

Questions for Mr. Scott Lawrence Palk

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 believe it is the role of a judge to interpret the Constitution in response to societal changes. If confirmed, I would adhere strictly to the constitutional interpretations of the United States Supreme Court and the Court of Appeals for the Tenth Circuit.

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

Response: Neither should play a role in the interpretation of statutes or the Constitution.

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

Response: Although there are a number of definitions for “judicial activism”, a common principle among many definitions is the willingness of a judge to substitute or insert a subjective view of interpreting constitutional or statutory issues rather than following existing law and precedent. I believe judicial decisions should be made based on the law and precedent without regard to a judge’s personal view.

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. Initially, a district court should attempt to resolve a case without addressing constitutional issues. If constitutional issues must be addressed, the court should declare a statute unconstitutional only if Congress has exceeded its constitutional authority in enacting the statute or the statute violates a constitutional provision.

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

Response: The United States Supreme Court has held that “fundamental rights” are those “rights and liberties which are objectively, deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations 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 recently considered the Religious Freedom Restoration Act and affirmed that private citizens and businesses 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 faithfully follow the precedents of the Supreme Court and the Court of Appeals for the Tenth Circuit.

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 United States Supreme Court has recognized a personal right to keep and bear arms as guaranteed by the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570 (2008). While the Court in *Heller* did not establish a precise standard for the level of scrutiny to be applied in all cases wherein firearms laws are challenged, the Court did determine that rational-basis review would not be the appropriate standard. *Id.* at 628 n.27. Subsequent to *Heller*, a number of circuit courts of appeals have since ruled on the issue. In reviewing the prohibition of possessing a firearm while subject to a domestic protection order in violation of 18 U.S.C. §922(g)(8), the Court of Appeals for the Tenth Circuit held intermediate scrutiny to be the appropriate standard. *United States v. Reese*, 627 F.3d 792, 802 (10th Circuit 2010). If confirmed, I would faithfully follow the precedents set by the United States Supreme Court and Court of Appeals for the Tenth Circuit.

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 it is constitutionally permissible for states to require voters to show photo identification before casting their votes. *Crawford v. Marion County Election*

Bd., 553 U.S. 181 (2008). If confirmed, I would faithfully follow the holdings of the United States Supreme Court and the Court of Appeals for the Tenth Circuit.

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: I would manage my caseload in accordance with the federal rules of procedure, guided by the practices and local rules for the Western District of Oklahoma. I would establish firm and reasonable deadlines for the efficient disposition of cases, while issuing rulings promptly in an effort to promote the steady progress of cases. I would also rely on the guidance and institutional knowledge of current judges and courthouse staff. I would prioritize cases in accordance with the above process when legally required or necessary for the efficient administration of justice.

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

Response: The United States Supreme Court has found the death penalty to be constitutional. I would not have a problem with imposing the death penalty.