Senator Grassley
Questions for the Record

Responses of Ronald G. Russell,
Nominee, U.S. District Judge for the District of Utah

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

   Response: I believe that a judge's most important attribute is to have the integrity and self-discipline to faithfully follow the rule of law, to treat parties fairly, equally and with dignity, and to act impartially. I believe that I have demonstrated these qualities throughout my legal career and as an elected public official.

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 must be dignified, patient, open-minded and free from bias. At the same time, a judge must be firmly in control of courtroom proceedings to ensure that all parties are treated fairly and with respect. I believe I meet this standard.

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 fully understand that Supreme Court and Circuit Court precedents are binding on District Courts. If confirmed as a District Court judge, I would faithfully follow higher court precedents without regard to any personal views that I may have regarding such precedents.

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: In a case of first impression involving a statute, I would first to attempt to decide the case based on the ordinary meaning of the statute's language. If the language is ambiguous, I would apply established canons of statutory construction, considering other relevant provisions of the statute and analogous authority. In the case of constitutional or statutory provisions, I would follow a similar process.

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 binding precedent from the Supreme Court or Court of Appeals without regard to whether I agree or disagree with the precedent. My personal views about a precedent would not play any role in my decision.

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

Response: Such circumstances would be extremely rare. A federal court should not address a constitutional challenge unless necessary to the disposition of the case. If the issue is necessary to the disposition of a case, a court should declare a statute unconstitutional only where it is clear that the statute is contrary to the text of the Constitution or where Congress has exceeded its constitutional authority.

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. Foreign law and world community views are not binding precedent and should not be relied upon in determining the meaning of 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 assure the Committee that if I am confirmed, my decisions would be based on the law and binding precedent and not political ideology or other motivation. As a trial lawyer for more than 30 years, I believe I have demonstrated my commitment to the rule of law, and understand the critical importance for judges to act impartially in deciding cases based on the law and facts.

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 assure both the Committee and future litigants that if I am confirmed, my personal views will be irrelevant to the resolution of any case. I will act impartially in deciding cases based on the law and the facts, and will treat all parties equally, respectfully and with dignity.

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

Response: I believe a judge must be actively involved early in all cases and involve magistrate judges to ensure that appropriate scheduling orders are entered and followed.

Also, alternative dispute resolution options should be made available as early in a case as is practical. If confirmed, I would hear and decide motions promptly and assist the parties in narrowing the issues to be determined at trial. I would carefully consider dispositive motions and grant them where warranted by the facts and law. I would also make certain that trials are conducted efficiently by using pre-trial hearings and orders to define the issues for trial. In my view, the key to docket management for a trial court is to actively discourage delay and set the expectation with attorneys practicing before the court that cases will be moved at an expeditious pace and resolved promptly.

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, judges have a key role in controlling the pace and conduct of litigation. If confirmed, I would take the steps stated in my previous answer to move cases expeditiously to conclusion. I believe that actively discouraging delay and setting expectations are key to effective docket management.

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: I have served as the chair of the Utah Judicial Conduct Commission. In that role, I always maintained an open mind until all the evidence and arguments were fully presented, I treated everyone who appeared before the commission fairly, equally and with dignity, and I applied the law to the facts in determining whether a judge had committed an ethical violation. If I am confirmed as a district court judge, I would follow these same principles in reaching a decision. Because most of my experience as a trial lawyer has been in civil cases, I anticipate that getting up to speed on criminal law would be the most difficult part of the 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 the statement?

Response: Decisions should not be based on a judge's own values, concerns, empathy or what is in his or her heart. Cases should be decided based on the law applied to the facts presented, even in "truly difficult" cases.

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

Response: I received these questions on April 28, 2016 from the Office of Legal Policy. I personally drafted answers and submitted them to the Office of Legal Policy on May 1, 2016 for review. I finalized the answers before submitting them to the Committee.

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

Response: Yes.

Questions for Judicial Nominees
Senator Ted Cruz

Responses of Ronald G. Russell
Nominee, U.S. District Court for
the District of Utah

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: I have practiced law as a trial lawyer for 32 years, but have not been a judge so I am not in a position yet to characterize my judicial philosophy. I have served as the chair of the Utah Judicial Conduct Commission. In that role, I always maintained an open mind until all evidence and arguments were fully presented, I treated everyone who appeared before the commission fairly, equally and with dignity, and I applied the law to the facts in determining whether a judge had committed an ethical violation. I would follow these same principles if I am confirmed as a district court judge.

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: A responsible judge interprets constitutional provisions, including due process and equal protection, without regard to any personal views or values. If confirmed, I would focus on the plain language of the provision at issue and would faithfully apply binding precedents from the United States Supreme Court and the Tenth Circuit Court of Appeals.

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: I have not engaged in a sufficient analysis to conclude that any decisions from the Warren, Burger or Rehnquist Courts were wrongly decided. If confirmed, I would faithfully apply binding precedent from the United States Supreme Court without regard to any personal opinion I might have as to the correctness of the Court's decision.

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

Response: I respect all of the sitting Justices and admire their commitment and service. All of the Justices have admirable traits. I am not sufficiently familiar with all of their traits, however, to single out a specific Justice I most want to emulate.

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: In *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), the Supreme Court held that a court should consider the original and ordinary meaning of the words used as would have been attributed by the "citizens in the founding generation." If confirmed, I would follow this precedent and other binding precedent from the Supreme Court regarding constitutional interpretation.

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: The rulings of and doctrines of foreign courts and international tribunals should not be relied upon in determining the meaning of our Constitution and laws. A district court should rely on binding precedent from the United States Supreme Court and the applicable Court of Appeals.

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

Response: Under the Constitution, the jurisdiction of federal courts is limited to cases and controversies that come before them. Any decisions of federal courts that may affect such institutions are limited by the Constitution, applicable federal law and binding precedent.

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: The living constitution approach is problematic because it opens the door for judges to substitute their personal values in place of those of the framers. Such an approach is in conflict with the doctrine of judicial restraint, which requires judges to interpret the Constitution according to the meaning of the words used as

intended by the framers and to follow binding precedent without regard to their own personal values or philosophies. I believe that a judge should exercise restraint and avoid injecting his or her own personal views or preferences into the Constitution.

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

Response: I do not have a favorite Supreme Court decision. If confirmed, I would faithfully follow all binding precedent from the Supreme Court.

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

Response: Generally speaking, judicial activism occurs when a judge injects his or her own personal philosophies and policy preferences into decisions. I do not believe that judicial activism is ever appropriate. As a district court nominee, I believe it would be inappropriate for me to characterize a specific United States Supreme Court decision as an example of judicial activism. If confirmed, I would exercise judicial restraint by making decisions based on the law and the facts without regard to my personal views and by faithfully honoring binding precedent.

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: It is my understanding that "natural law" generally refers to a philosophy that certain rights or rules of conduct common to all humans are derived from nature, rather than from positive law. If confirmed, I would base decisions on the language of the Constitution, statutes and binding precedents, not on "natural law."

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: The Supreme Court's decision in *Garcia v. San Antonio Metro Transit Authority*, 469 U.S. 528 (1985), is binding precedent which I would follow without regard to my personal views.

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 identified three broad areas that Congress may regulate under the Commerce Clause: (1) the use of channels of interstate commerce, (2) instrumentalities of interstate commerce, or persons or things in interstate commerce, and (3) activities having a substantial relation to interstate commerce. *United States v. Lopez*, 514 U.S. 1, 37 (1995); *see Gonzales v. Raich,* 545 U.S. 1, 15 (2005); *United States v. Morrison,* 529 U.S. 598, 608 (2000). If confirmed, I would faithfully apply all binding Supreme Court and Tenth Circuit precedent in any case that might come before me involving the Commerce Clause and the Necessary and Proper Clause.

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: In *NFIB v. Sebelius*, 132 S. Ct. 2566, 2602 (2012), the Supreme Court concluded that Congress may condition the receipt of federal funds, but the condition must be "in the nature of a contract." The Court stated that the "legitimacy of Congress's exercise of the spending power 'thus rests on whether the State voluntarily and knowingly accepts the terms of the contract.'" *Id.* (quoting *Pennhurst State Sch. & Hosp. v. Halderman,* 451 U.S. 1, 17 (1981)). If confirmed, I would apply this and all other binding precedent in a case involving conditions placed on the receipt and use by states of federal funds.

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: In *Sebelius*, the Supreme Court reviewed the individual mandate under the Affordable Care Act. Five justices concluded that under the Taxing Clause, Congress could require certain individuals to pay a financial penalty for not obtaining health insurance. Chief Justice Roberts' opinion also stated that the Commerce Clause does not give Congress the power to require that an individual maintain health insurance. Whether Chief Justice Roberts' Commerce Clause analysis in *Sebelius* is binding precedent or dicta is a matter of dispute. *See, e.g., United States v. Henry*, 688 F.3d 637, 641-42 n.5 (9th Cir. 2012), *cert. denied*, 133 S. Ct. 996 (2013); *Liberty Univ., Inc. v. Lew,* 733 F.3d 72, 94 n.7 (4th Cir. 2013), *cert. denied,* 134 S. Ct. 683 (2013). This dispute is the result of the fragmented *Sebelius* opinion.

Presidential Power

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

Response: In *Youngstown Sheet & Tube Co. v. Sawyer,* 345 U.S. 579, 585 (1952), the Supreme Court held that the President's ability to issue executive orders "must stem either from an act of Congress or from the Constitution itself." Whether the President's action is authorized by an act of Congress or the Constitution is reviewed under the "tripartite scheme" set forth in Justice Jackson's concurring opinion in *Youngstown*. *See Medellin v. Texas*, 552 U.S. 491, 542 (2008). If confirmed, I would faithfully apply this and other binding precedent.

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

Response: The President's authority must stem from "an act of Congress or the Constitution itself." *Youngstown*, 345 U.S. at 585. Please see my response to the previous question.

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 defined a right as "fundamental" for purposes of the substantive due process doctrine if it is "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 and quotations omitted). If confirmed, I would follow binding precedent from the Supreme Court and the Tenth Circuit Court of Appeals.

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

Response: The Supreme Court has held strict scrutiny applies to classifications based on race, alienage, national origin, illegitimacy and gender. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). If confirmed, I

would apply binding Supreme Court and Tenth Circuit precedent on this and any other issue.

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: I have no personal expectation regarding this issue. If confirmed, my personal views, if any, would not be a factor in my decisions. I would apply binding precedent from the Supreme Court and the Tenth Circuit Court of Appeals.

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

Response: The Supreme Court has held that "when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny." *Parents Involved in Community Schools v. Seattle School Dist. No. 1,* 551 U.S. 701, 720 (2207). In *Fisher v. University of Texas at Austin,* 133 S. Ct. 2411 (2013), the Court explained, "[s]trict scrutiny is a searching examination, and it is the government that bears the burden to prove 'that the reasons for any [racial] classification [are] clearly identified and unquestionably legitimate.'" *Id.* at 2419 (internal quotation omitted). If confirmed, I would apply binding Supreme Court and Tenth Circuit precedent to this and any other issue that might come before me.

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 Supreme Court has held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in the case of confrontation," and protects the right to bear arms "for self-defense in the home." *District of Columbia v. Heller*, 554 U.S. 570, 592, 636 (2008); *see McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding that the Second Amendment guarantees apply to the states under the Fourteenth Amendment). The Supreme Court has not addressed the right to keep and bear arms in public, although several appellate courts have recognized a right beyond the home. If confirmed, I would apply binding Supreme Court and Tenth Circuit precedent to this and any other issue that might come before me.

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

Responses of Ronald G. Russell
Nominee, United States District Judge for the District of Utah

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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: First, I would decide the case based on the ordinary meaning of the statute's language. If the statute is plain and unambiguous, it should be applied according to its terms. If the language is ambiguous, I would apply established canons of statutory construction, considering other relevant provisions of the statute and analogous authority. Legislative history may be relevant in some limited circumstances. I would look to legislative history only if a statute is ambiguous and only to the extent required by binding precedent from the Supreme Court and the Tenth Circuit.

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

   Response: The 10th Amendment confirms that the power of the federal government is subject to limits. In *New York v. United States*, 505 U.S. 144 (1992), the court held, "While no one disputes the proposition that '[t]he Constitution created a Federal Government of limited powers,'. . . ; and while the Tenth Amendment makes explicit that '[t]he powers 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'; the task of ascertaining the constitutional line between federal and state power has given rise to many of the Court's most difficult and celebrated cases." *Id*. at 155 (citation omitted). There is longstanding Supreme Court precedent that identifies protected state powers under the 10th Amendment. If confirmed as a United States District Court Judge, I would follow binding precedent concerning the 10th Amendment's scope, without regard to any personal views.

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

   Response: I do not have an opinion on whether current standing doctrine fosters or impedes litigants. If confirmed, I would faithfully apply binding precedent on the standing doctrine as set forth by the Supreme Court and the Tenth Circuit.

Questions for the Record
Senate Judiciary Committee
Senator Thom Tillis

Responses of Ronald G. Russell
Nominee, United State District Court for the District of Utah

Questions for Mr. Ronald George Russell

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: The living constitution approach is problematic as it opens the door for judges to substitute their personal values in place of those of the framers. Such an approach is in conflict with the doctrine of judicial restraint, which requires judges to interpret the Constitution according to the meaning of the words used as intended by the framers and to follow binding precedent without regard to their own personal values or philosophies. I believe that a judge should exercise restraint and avoid injecting his or her own personal views or preferences into the Constitution.

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

   Response: I would uphold the rule of law and apply binding precedent in any case without regard to my personal views, societal pressure or popular opinion.

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

   Response: Generally speaking, judicial activism occurs when a judge injects his or her own personal philosophies and policy preferences into decisions. I do not believe that judicial activism is ever appropriate. If confirmed, I would exercise judicial restraint by making decisions based on the law and the facts without regard to my personal views and by faithfully honoring binding precedent.

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

Response: Such circumstances would be extremely rare. A federal court should not address a constitutional challenge unless necessary to the disposition of the case. If the constitutional issue is necessary to the disposition of a case, a court should declare a statute unconstitutional only where it is clear that the statute is contrary to the text of the Constitution or where Congress has exceeded its constitutional authority.

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

   Response: The United States Supreme Court has defined a right as "fundamental" for purposes of the substantive due process doctrine if it is "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 and quotations omitted). If confirmed, I would follow binding precedent from the Supreme Court and the Tenth Circuit Court of Appeals.

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 Constitution protects the free exercise of religion. As observed by the United States Supreme Court in *Church of the Lukumi Bablu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 523 (1993), the principle that the "government may not enact laws that suppress religious beliefs or practice is so well understood that few violations are recorded in our opinions." In *Lukumi*, the Court held that where "the object of a law is to infringe upon or restrict practices," it is invalid under the First Amendment "unless it is justified by a compelling interest and is narrowly tailored to advance that interest." *Id.* at 533. Consistent with this precedent, the Court has affirmed statutory protections for the exercise of sincerely held religious beliefs. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.,* 134 S. Ct. 2751 (2014); *Cutter v. Wilkinson,* 544 U.S. 709 (2005). If confirmed, I would faithfully apply binding precedent from the Supreme Court and the Tenth Circuit regarding this issue.

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 held that Second Amendment rights are fundamental rights. See *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010). As such, a heightened level of scrutiny is required when a court reviews a challenge to statutes or regulations related to firearms. If confirmed, I would faithfully apply binding precedent regarding this issue and any other issue that might come before me.

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

   Response: In *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the United States Supreme Court upheld as Constitutional a state election law requiring voters to provide photo identification. If confirmed, I would faithfully apply this binding precedent.

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 believe a judge must be actively involved early in all cases and involve magistrate judges to ensure that appropriate scheduling orders are entered and followed. Criminal cases require priority in scheduling, but I would otherwise treat all cases the same in terms of priority. If confirmed, I would hear and decide motions promptly and assist the parties in narrowing the issues to be determined at trial. I would carefully consider dispositive motions and grant them where warranted by the facts and law. Alternative dispute resolution options should be made available as early in a case as is practical. I would also make certain that trials are conducted efficiently by using pre-trial hearings and orders to define the issues to be tried. In my view, the key to docket management for a trial court is to actively discourage delay and set the expectation with attorneys practicing before the court that cases will be moved at an expeditious pace and resolved promptly.

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 determined that the death penalty is constitutional. If confirmed, I would faithfully apply controlling

precedent on this issue and would not have a problem presiding in cases where the jury determines that the death penalty should be imposed.