

**Senator Chuck Grassley  
Questions for the Record**

**Indira Talwani**

**Nominee: U.S. District Judge for the District of Massachusetts**

- 1. As a judge, what will your approach to legislative history be? When will you consult it and which types of legislative history will you consider?**

Response: If confirmed as a district judge, I would apply binding Supreme Court and First Circuit precedent in interpreting statutes. Under these precedents, if the meaning of a statutory text is unambiguous, I would apply the statute according to its terms. *See e.g. Carcieri v. Salazar*, 555 U.S. 379, 129 S. Ct. 1058, 1063-64 (2009). In examining the statutory text, I would look to the plain meaning of the words in the broader context of the statute as a whole, and I would consider the surrounding language and statute's structure. *United States v. Godin*, 534 F.3d 51, 56, 58 (1st Cir. 2008). After such inquiries, a statute may still be ambiguous in that it admits of more than one reasonable interpretation. In that limited circumstance, First Circuit case law supports analyzing legislative history in order to determine congressional intent. *See, e.g. Recovery Group, Inc. v. Commissioner of Internal Revenue*, 652 F.3d 122, 127-28, 131 (1st Cir. 2011). Even in that limited circumstance, if the legislative history does not clearly evince congressional intent, the First Circuit will not rely on legislative history to resolve the ambiguity. *See, e.g., United States v. Godin*, 534 F.3d 51, 60 (1st Cir. 2008).

- 2. 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 a deep and sincere commitment to ensuring the fairness of the court's proceedings and the integrity of the court's decisions and actions. I believe I possess this attribute.

- 3. 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 a judge should be respectful to all parties, open-minded, and diligent. I believe that each of these elements is essential to ensuring that proceedings are fair and unbiased, and I believe I meet that standard.

- 4. 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 committed to following the binding precedents of the United States Supreme Court and the First Circuit faithfully and to giving them full force and effect if confirmed as a district judge whether or not I personally agree with such precedents.

- 5. 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 matter of first impression, I would begin with the plain language of a statute in question. If the language was unclear, I would use other tools of statutory construction to determine its meaning, and review for persuasive authority the case law from the Supreme Court and First Circuit addressing analogous issues, and case law from other circuits addressing the same issue. If these sources did not resolve the issue, I would also consider legislative history.

- 6. 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 as a district judge, I would apply binding precedent of the Supreme Court and the First Circuit whether or not I agreed with their decision.

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

Response: “[R]espect for the decisions of a coordinate branch of Government demands [that federal courts] invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds.” *United States v. Morrison*, 529 U.S. 598, 607 (2000). Moreover, if there are two plausible constructions of a statute, and one would raise constitutional problems, the other should prevail. *Clark v. Martinez*, 543 U.S. 371, 380-81 (2005). If confirmed as a district judge, I would apply these and other applicable precedents of the Supreme Court and First Circuit in considering whether a statute enacted by Congress is unconstitutional.

- 8. 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. If confirmed as a district judge, in determining the meaning of the Constitution, I would not rely on foreign law or the views of the “world community.”

- 9. 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 am fully committed to ensuring that, if confirmed as a district judge, my decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation.

- 10. 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 truly understand the different roles of an advocate and a judge, and if confirmed as a district judge, I would set aside any personal views, treat all parties fairly regardless of their background or circumstances, and decide cases solely based on the relevant law and facts.

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

Response: If confirmed as a district judge, I would take an active role in managing my caseload through the case management system as described in response to question 12. I would also endeavor to resolve all motions promptly, and would monitor cases closely to ensure that they are not unnecessarily delayed.

- 12. 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: I believe that district judges have an important role in controlling the pace and conduct of litigation. If confirmed, I would use the court's case management system and case management conferences to ensure that each case assigned to me had an efficient schedule in place, including identification of the principal issues in contention, a reasonable discovery plan including phased discovery where appropriate, time lines for pre-trial motions, a determination of whether phased resolution or bifurcation of issues for trial is appropriate, and consideration of alternative dispute resolution.

- 13. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

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

Response: I received these questions on January 15, 2014. I drafted responses to the questions and provided them to the U.S. Department of Justice on January 21, 2014. After discussing my responses with a representative of the Department of Justice, I finalized my responses on January 23, 2014 and authorized the Department to transmit them to the Committee.

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

Response: Yes.

**Questions for the Record**  
**Senator Ted Cruz**

**Indira Talwani**  
**Nominee, U.S. District Judge for the District of Massachusetts**

**Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice’s judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: I have not studied the writings of the Supreme Court Justices to allow me to identify the judicial philosophies of the individual Justices. If confirmed as a district judge, my approach would be to decide each case before me based on the facts of that case and the applicable law.

**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, or some other form)?**

Response: If confirmed, I would follow binding Supreme Court and First Circuit precedents interpreting the United States Constitution, including precedent considering the public understanding of text in the time of enactment. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

**If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If confirmed as a district judge, I would be bound by precedent of the Supreme Court and the First Circuit. I would not overrule that precedent.

**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 Metropolitan Transit Authority*, 469 U.S. 528 (1985), is binding precedent. If confirmed as a district judge, I would follow and apply the holdings in *Garcia* as I would all other binding precedent.

**Do you believe that Congress’ Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: The Supreme Court has identified three categories of activity that Congress may regulate under its commerce power. First, Congress “may regulate the use of channels of interstate commerce.” Second, Congress “may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities.” Finally, Congress may “regulate those activities that substantially affect interstate commerce.” *See United States v. Morrison*, 529 U.S. 598, 608-09 (2000); *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). If confirmed as a district judge, I

would follow and apply the holdings in *Morrison* and *Lopez* as I would all other binding precedent.

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

Response: The Supreme Court has held that the President's authority to act "must stem either from an act of Congress or from the Constitution itself." *Medellin v. Texas*, 552 U.S. 491, 524 (2008), citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) and *Dames & Moore v. Regan*, 453 U.S. 654, 668 (1981). The Supreme Court has identified the "accepted framework for evaluating executive action" as set forth in Justice Jackson's concurrence in *Youngstown*. 552 U.S. at 524-25, citing *Youngstown*, 343 U.S. at 635-38 (Jackson, J., concurring).

**When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: The Supreme Court has stated that a right is fundamental for purposes of the substantive due process doctrine only if it "is fundamental to our scheme of ordered liberty and system of justice." *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3034 (2010). Only fundamental rights and liberties "which are 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty'" qualify for such protections. *Chavez v. Martinez*, 538 U.S. 760, 775 (2003), quoting *Washington v. Gluckberg*, 521 U.S. 702, 720-21 (1997). If confirmed as a district judge, I would follow this and all other binding precedent from the Supreme Court and the First Circuit concerning the substantive due process doctrine.

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

Response: The Supreme Court has held that heightened scrutiny under the Equal Protection Clause is appropriate when a classification burdens a fundamental right or when it operates to the peculiar disadvantage of a suspect class. *See, e.g., City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). Legislative classifications based on race, alienage and national origin are subject to strict scrutiny. *Id.* Legislative classifications based on gender and illegitimacy are subject to intermediate scrutiny under the Equal Protection Clause. *United States v. Virginia*, 518 U.S. 515, 531-33 (1996); *City of Cleburne*, 473 U.S. at 441. If confirmed as a district judge, I would follow this and all other binding precedent from the Supreme Court and the First Circuit on what classifications are subject to heightened scrutiny and how to apply such scrutiny.

**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: If confirmed as a district judge, I would apply the holdings in *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013) and other binding precedent of the Supreme Court and the First Circuit regardless of any personal expectations I might have.