

**Response of Raymond P. Moore**  
**Nominee to be United States District Judge for the District of Colorado**  
**to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: My philosophy is to treat all litigants fairly and with both patience and respect, to decide matters coming before the court with transparency, to decide matters narrowly by ruling only on those issues actually before the court, and to decide matters with fidelity to the principle of stare decisis. The role of the judge in our constitutional system is to resolve matters coming before the court by application of these principles, while also respecting the rights of the public as well as the role of the jury.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: During my career, I have represented plaintiffs and defendants ranging from wealthy corporations to indigent individuals. I have prosecuted criminal cases as an AUSA and defended those charged as an AFPD. I have litigated in both the civil and criminal arenas. I have represented all clients without regard to societal status, wealth or political beliefs. This background informs my commitment to treat all litigants fairly. I assure the Committee that all litigants will be treated fairly in my courtroom if I am fortunate enough to be confirmed.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: District judges are absolutely bound to the doctrine of stare decisis. Controlling precedent is settled law which must always be followed. The United States Supreme Court and the United States Courts of Appeals sitting en banc may reconsider their own precedent in limited circumstances. However, a district judge is always bound to follow controlling precedent.

**Response of Raymond P. Moore**  
**Nominee to be United States District Judge for the District of Colorado**  
**to the Written Questions of Senator Chuck Grassley**

- 1. In sentencing, what consideration should a judge give to factors such as a defendant's race, age, marital status, or family status (whether or not the defendant has children)? Should two defendants who committed the same crime receive different sentences based on these factors?**

Response: None of these factors should be a determining factor in imposing a sentence on an individual. Two defendants committing the same crime should not be sentenced differently simply because of such differences. Sentences should be imposed in accordance with the laws passed by Congress and binding precedent. Currently, 18 U.S.C. §3553 requires a sentencing judge to consider seven specific factors in sentencing a defendant.

- 2. As a federal judge, if confirmed, what factors would you weigh in considering alternative sentencing programs?**

Response: If confirmed, the only factors I would consider are those required by the laws of the United States and binding precedent. Currently, those factors are set forth in 18 U.S.C. §3553 and include the U.S. Sentencing Guidelines, policy statements of the Sentencing Commission, avoidance of unwarranted disparity and other factors.

- 3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

Response: No.

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

Response: The most important attribute of a judge is to be fair and impartial in all matters coming before the court. A judge must apply the law without favoritism, bias or preconception as to the proper outcome. This attribute must be present both in fact and in appearance. I believe that I possess this attribute.

- 5. 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 be at all times even tempered, patient, open minded and courteous to those who appear before him. A judge must also be decisive in deciding

the issues that come before the court. I believe that all of these attributes are of equal importance. I also believe that I meet this standard.

- 6. 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. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

- 7. 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 turn first to the statute at issue and examine its plain language. If the plain language is unambiguous, the inquiry is at an end and the matter must be resolved on that basis. If the plain language does not resolve the matter, I would apply the existing standards or canons of statutory construction. I would also consider precedent with respect to analogous matters in the cases of the United States Supreme Court, the United States Court of Appeals for the Tenth Circuit, other circuit courts of the United States and, lastly, other United States District Courts.

- 8. 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: The decision of the Supreme Court or Court of Appeals must be applied as it is binding precedent. My belief as to its wisdom or correctness would be irrelevant.

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

Response: Statutes passed by Congress are presumed to be constitutional. Such statutes should only be declared unconstitutional where it is clear that the statute violates an express provision of the Constitution or where Congress has clearly exceeded its constitutional powers.

- 10. 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?**

Response: No.

- 11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: I believe that caseload management can be aided by the use of realistic deadlines, status or case management conferences with the parties, availability to resolve matters that arise during the course of litigation, effective use of magistrate judges, and prompt rulings by the judge. I would employ all of these tools to manage my caseload. I would also consult with existing judges for procedures, tools and approaches which they have found to be effective.

- 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: Yes. I would employ the tools and methodologies described above in response to the previous question.

- 13. 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: If confirmed, I would approach each case with an open mind. I would listen carefully to the arguments of the litigants and review carefully their memoranda and other written submissions. I would listen to the witnesses and review all exhibits received into evidence. If the decision I had to make were a factual one, I would reach that decision by looking to these matters as sources of information. If the decision were a legal one, I would apply existing law and precedent to the facts. What I expect to be the most difficult part of the transition will be to avoid any urge to argue, question, or analyze the issue as if I were presenting it. Being aware of this issue, however, I believe that I will be able to let the litigants litigate without interference and to confine myself to my new role in the judicial process.

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

Response: I received the questions on January 30, 2013. On January 30-31, 2013, I prepared my draft responses. I forwarded these to representatives of the Department of Justice for discussion on January 31, 2013. After discussion, I finalized my responses and, on February 2, 2013, authorized their submission.

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

Response: Yes.

**Written Questions of Senator Jeff Flake**  
Raymond P. Moore  
*Nominee, to be United States District Judge for the District of Colorado*  
U.S. Senate Committee on the Judiciary  
January 30, 2013

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**1. What qualities do you believe all good judges possess?**

Response: I believe that all good judges are fundamentally fair and even handed in their treatment of litigants, open minded with respect to the arguments and positions of the litigants, well prepared, and observant of the rule of law.

**a. How does your record reflect these qualities?**

Response: Over my career, I have represented and advocated strongly for the rights of a wide range of clients, including large corporations, the United States, and indigent individuals. And with respect to individuals, my clients have ranged from the most highly educated to the illiterate. I submit that the ability to interact with, understand and advocate for such diverse clients and interests is suggestive of the ability to be fair, open minded and even handed. I submit that my selection as an Alternate Employment Dispute Resolution Coordinator for the Tenth Circuit Court of Appeals is also suggestive of the ability to be fair and balanced in my treatment of individuals. I have always been well prepared in my dealings with the court and others, and commit to continuing to be so. And having been an advocate from several perspectives, I am mindful of the role that the rule of law plays in proper decisions of a judge.

**2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?**

Response: As with all matters, if established precedent exists as to the proper meaning or scope of a Constitutional provision, such precedent would be binding. Absent that, the Constitution should be interpreted according to the plain meaning of its terms. If the plain meaning is uncertain or cannot be discerned, determination of the original meaning may be a proper part of an analysis to attempt to determine the intent of the framers under established rules of statutory construction.

**a. If so, how would you determine the original meaning?**

Response: Depending upon the term, phrase or clause at issue, resort may be made to an examination of other parts of the Constitution where similar language may have been used. I would also look to all established rules of construction for determining the correct meaning. This could include review of the debates and convention discussions, as well as writings of the framers pertinent to the issue, if any.

**3. In Federalist Paper 51, James Madison wrote: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first**

**enable the government to control the governed; and in the next place oblige it to control itself.” In what ways do you believe our Constitution places limits on the government?**

Response: The Bill of Rights, including the 10<sup>th</sup> Amendment, limits the powers of government. Additionally, the specific enumeration of the powers of the various branches of government acts as a limit on government power.

**a. How does the Judicial Branch contribute to this system of checks and balances?**

Response: The role of the Judicial Branch in such matters is the same as it is in all matters – to interpret and apply the law and Constitution fairly and impartially, without preconception or political motivation, and to thereby assure that constitutional limits are faithfully applied.

**4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

**a. Some have said the Court’s decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court’s earlier Commerce Clause decisions. Do you agree? Why or why not?**

Response: Over my years of practice, my approach to Commerce Clause issues has been narrow and case specific. I have not performed an academic analysis of all Commerce Clause cases and precedent. Nor have I familiarized myself with the nuances of the position of those who claim inconsistency. Both *Lopez* and *Morrison* are binding precedent and would be treated as such by me.

**b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?**

Response: I am not sufficiently familiar with the Supreme Court’s cases in this area to be able to state the limits of Commerce Clause authority applicable to all circumstances. In matters involving the limits of Commerce Clause authority, I would consider the specific issue before me, apply such binding precedent as may exist, consider the position and input of the litigants and rule narrowly on the specific issue before the court. I do recognize, however, that the Commerce Clause has limits and is not a grant of unconstrained power to the Congress.

**c. Is any transaction involving the exchange of money subject to Congress’s Commerce Clause power?**

Response: No.

**5. What powers do you believe the 10<sup>th</sup> Amendment guarantees to the state? Please be specific.**

Response: By its terms, the 10<sup>th</sup> Amendment guarantees to the states all powers not delegated to the United States or prohibited by the states under the U.S. Constitution. My understanding is that the Supreme Court has utilized the 10<sup>th</sup> Amendment to invalidate attempts by the federal government to compel states to enforce federal regulations and programs. Beyond that, I hold to no preconceived list of powers which I would declare to be within or beyond the scope of the 10<sup>th</sup> Amendment. I would approach this issue in the same manner as any other – applying existing precedent, listening to and fairly considering the position of the parties, and ruling narrowly and without preconception on such matters as may come before me if I am fortunate enough to be confirmed.

**Response of Raymond P. Moore  
Nominee to be United States District Judge for the District of Colorado  
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

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

Response: My philosophy would be to treat all litigants fairly and with both patience and respect, to decide matters coming before the court with transparency, to decide matters narrowly by ruling only on those issues actually before the court, and to decide matters with fidelity to the principle of stare decisis. I have not studied the Justices over the years with an eye towards identifying their judicial philosophies, in part because their role as Justices of the highest court of the land differs from that of a District Judge. I doubt that I would wholly subscribe to the entire philosophy of any one Justice.

**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: I believe that the Constitution is not an organic document whose meaning constantly changes with the times. The Constitution should be interpreted according to the plain meaning of its terms. If the plain meaning is uncertain or cannot be discerned, originalism may be a proper part of an analysis to attempt to determine the intent of the framers under established rules of construction.

**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 United States District Court Judge, I would have no authority or power to overrule precedent from the U.S. Supreme Court or Tenth Circuit Court of Appeals and would not seek to do so under any circumstances.

Congressional Power

**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: This pronouncement of the U.S. Supreme Court stands as precedent for District Court Judges. As such, my personal feelings towards such issue would have no place in any decision which I may be called upon to make in this regard.

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

Response: The U.S. Supreme Court has held and determined that Congress may regulate three broad categories of activity under its commerce power. In *United States v. Lopez*, 514 U.S. 549, 558 (1995), the Court identified these categories of activities as: (i) “the use of the channels of interstate commerce,” (ii) “the instrumentalities of interstate commerce,” and (iii) “activities having a substantial relation to interstate commerce.” Activity which does not fall within these categories is beyond Congress’s power to regulate. As to the place of “non-economic activity” in this regulatory scheme, Justice Scalia has observed that “Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.” *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring).

Presidential Power

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

Response: The President and the Executive Branch are limited by the authority and powers vested in that Office and Branch by the U.S. Constitution. These limitations are judicially enforceable.

Individual Rights

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

Response: A right is “fundamental” when it is deeply rooted in the history or tradition of the United States. And from a district court perspective, a right is “fundamental” when it has been so characterized by the U.S. Supreme Court or the applicable Court of Appeals.

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

Response: A classification should be subject to heightened scrutiny when it involves race, gender or other suspect classification or when the classification burdens fundamental rights such as the right to vote.

**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 specific expectation as to when the use of racial preferences in public higher education will no longer be necessary in the sense described in *Grutter*. As a nation we have

been making steady progress on this front, and I would hope that it would be the case that preferences will not be necessary in 15 years. However, the actual determination will need to be based on the facts as are developed in such cases as come before the Supreme Court.