

**Senator Chuck Grassley  
Questions for the Record**

**Bruce Howe Hendricks,  
Nominee, U.S. District Judge for the District of South Carolina**

**1. In 2009, you upheld a jury award of \$3 million in punitive damages in a defamation case. That was 30 times more than the amount of compensatory damages awarded.**

**a. What is your view on the amount of deference jury awards are entitled to?**

Response: The jury system is foundational to our system of justice and constitutionally enshrined. The Fourth Circuit Court of Appeals has recognized that, “[u]nder the applicable legal principles, a trial court ‘should exercise its discretion to award a new trial sparingly,’ and a jury verdict is not to be overturned except in the rare circumstance when the evidence ‘weighs heavily’ against it.” *United States v. Smith*, 451 F.3d 209, 216-17 (4th Cir. 2006) (quoting *United States v. Perry*, 335 F.3d 316, 320 (4th Cir. 2003)).

**b. Every case is different, but what are your views, generally, on the appropriateness of an award that large, where the plaintiff has suffered little or no physical injury?**

Response: A district court judge should consider all punitive damage awards in accordance with the factors outlined in the United States Supreme Court decision, *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-75 (1996), including: (1) the degree of reprehensibility of the defendant’s misconduct; (2) the ratio of the actual or potential harm suffered by the plaintiff to the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil or criminal penalties authorized for comparable misconduct. The United States Supreme Court has stated that the most important of these three guideposts is the degree of reprehensibility of the defendant’s conduct, as it reflects the elementary notion that “some wrongs are more blameworthy than others.” *Gore*, 517 U.S. at 575.

**2. In a 2008 speech you stated your belief that “there is certainly evidence of racial injustice and inequality in our court system.” Please explain what you meant by that statement.**

Response: In the 2008 speech, I was attempting to remind attorneys in attendance that their obligations in representation should not be affected by the type of representation secured, whether retained or court appointed. I discussed an article that suggested that a defendant’s ability to pay for legal representation is more predictive of outcome than a defendant’s race. The statement quoted above was simply a prefatory acknowledgement that even as there exists evidence of some disparity of outcome in our judicial system

along racial lines, the data indicates socio-economics may be more responsible than any sort of perceived racial bias.

- 3. In a September 2011 speech you described your caseload a “junk no one else wants to do.” (Emphasis in original). Please explain what you meant by that statement.**

Response: Every case that comes before me is important. It is my privilege to hear them. By way of context, the District of South Carolina by Local Rule makes referral of certain substantive areas, to its magistrate judges, automatic. For their reoccurrence in some volume, those types of cases are well-suited for the specialization and institutional knowledge magistrate judges can accrue in them. Without such a system, these same cases might pose a challenge to the general efficiency of the Court. Continuing education is an annual requirement of lawyers at the bar. Any opportunity I have to speak with some levity to them, I do. Notwithstanding, the tongue-in-cheek sentiment above could have been phrased more tastefully or not at all. It does not reflect any view of mine, as my judicial record, and the seriousness with which I approach each case, plainly demonstrate.

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

Response: A good judge must possess many important attributes, including conformity to the rule of law. But, before any element of one’s judicial philosophy or jurisprudential virtue, a judge must be humble first. A judge must possess humility before the law, humility before the bar and litigants, and humility before each case. A humble spirit allows a judge to see clearly and rule objectively. Over the last 12 years, as a United States Magistrate Judge, I have made it my goal to allow those who know better - the lawyers, litigants, experts, and witnesses - space to try their case without the unnecessary over-involvement of a too self-important judge.

- 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: Appropriate judicial temperament includes, in the least, the qualities of impartiality, fairness, respectfulness, humility, integrity and commitment to the rule of law. I believe my record as United States Magistrate Judge demonstrates my dedication to those ideals.

- 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. 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: My personal view is not relevant to the adjudication of any case that would appear before me. If confirmed, I would faithfully apply the controlling legal precedents

of the United States Supreme Court and the Fourth Circuit Court of Appeals regardless of my privately held opinions, if any.

- 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 first consider the plain language of any statute, regulation, or other provision applicable to the question. If the language was unambiguous, then I would apply the language as written. If the language was ambiguous, at least as applied to the facts of the particular case before me, then I would apply the principles of statutory construction and look to precedents from the United States Supreme Court and the Fourth Circuit. If no analogous or instructive Supreme Court or Fourth Circuit precedent existed, I would look to other circuit courts of appeals in analogous cases which addressed the issue before me. Finally, if no such persuasive authority existed in the courts of appeals, I would look to consideration of the issue by the district courts, first of the Fourth Circuit and then elsewhere.

- 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: If confirmed, I would always follow the precedents of the United States Supreme Court and the Fourth Circuit Court of Appeals, notwithstanding any personal opinion I may have.

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

Response: As courts of limited jurisdiction and a co-equal branch, federal courts should presume the constitutionality of congressional action. A court, therefore, should not address the constitutionality of a statute if the case can be decided on other grounds. Should a court, however, determine that a statute enacted by Congress exceeded its authority or contradicts the Constitution it would be appropriate for a federal court to declare the statute unconstitutional if such a determination was absolutely necessary and appropriate to resolve the case and otherwise justiciably appropriate. I would follow Supreme Court and Fourth Circuit precedent in making such a determination.

- 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? Please explain.**

Response: No.

- 11. 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 no agenda, political or personal. My record as a United States Magistrate Judge for 12 years proves my commitment to *stare decisis* and the rule of law.

- 12. 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: My personal views are irrelevant to the judicial decisions before me. My record as a United States Magistrate Judge for 12 years attests to my objectivity and impartiality.

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

Response: I have now had 12 years' experience managing a significant caseload as a United States Magistrate Judge. In addition to reports and tools available in the district court's electronic filing system, I have developed my own methodology for tracking the progress of cases assigned to me. If confirmed I would continue to actively manage my caseload with the assistance of chambers staff and staff from the clerk of court. I would make every effort to promptly dispose of motions and discovery disputes and I would strongly encourage the parties to engage in serious settlement discussions early in the case.

- 14. 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: Judges have an essential role in controlling the pace and conduct of litigation. Our judicial system would be overrun without active oversight. If confirmed, I would set firm scheduling deadlines, promptly decide motions, encourage settlement discussions early in the litigation, and promote the efficient resolution of discovery disputes. That being said, cases do not belong to the judge. They are chiefly the interest of litigants and their lawyers. I do not meddle. I believe that docket management is some balance of both judicial vigilance and restraint.

- 15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: I read the written submissions of the parties, review the cases cited by the parties, listen and consider any oral argument presented, and apply the law as set forth in the decisions of the United States Supreme Court and the Fourth Circuit Court of Appeals to the facts of the case.

**16. 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.

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

Response: The questions were provided to me on the afternoon of February 18, 2014, by personnel from the Department of Justice. I prepared responses to the questions and reviewed them with a representative of the Office of Legal Policy of the Department of Justice, on February 20, 2014, and asked that my responses be submitted to the Senate Judiciary Committee.

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

Response: These answers reflect my true and personal views.

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

**Bruce Howe Hendricks,**  
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**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: Although I do not ascribe to some fully unified judicial philosophy, there are certain rudimentary jurisprudential guidelines I follow, including a commitment to the rule of law, the doctrine of *stare decisis*, respecting the limited jurisdiction of federal courts, judicial economy, and considerations for federalism. My philosophical approach would also include impartiality, fairness, respectfulness, humility, and integrity. I think these principles have been exhibited by many, if not all, of the justices presiding in the courts identified above.

**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: My role as a district judge in a case involving constitutional interpretation would be to study the facts of the case before me and apply the applicable precedent to the case, including precedent which considers the original public meaning of the text, as the Supreme Court did in *District of Columbia v. Heller*, 554 U.S. 570 (2008), or the original intent of the drafters.

**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: As a district judge, I would never overrule 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: Respectfully, my personal view of the statement is not relevant. If confirmed to serve as a United States District Judge, I would be bound by the Supreme Court’s decision in *Garcia*. I would apply the holding in that case without regard to whether or not I personally agreed with the decision.

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

Response: United States Supreme Court precedent, including the seminal decision, *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), provides that Congress may regulate under the Commerce Clause in three ways: it may (1) “regulate the use of the channels of interstate

commerce”; (2) “regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce”; and (3) “regulate those activities having a substantial relation to interstate commerce.” *Lopez*, 514 U.S. at 558-59; *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow the precedent of the Supreme Court and Fourth Circuit in determining the propriety of congressional action pursuant to the Commerce Clause.

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

Response: The Supreme Court spoke on the President’s authority to act in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) and in *Medellin v. Texas*, 552 U.S. 491, 524 (2008). The Supreme Court has determined that the President’s authority to act must come from either an act of Congress or from the Constitution. If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent in deciding any challenge to executive action.

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

Response: In *Washington v. Gluckberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted), the Supreme Court held that fundamental rights include “the specific freedoms protected by the Bill of Rights,” and “those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition” and which are “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” If confirmed, I would follow Supreme Court and Fourth Circuit precedent in deciding issues concerning fundamental rights.

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

Response: The Supreme Court has identified the immutable and protected classifications which are subject to heightened scrutiny under the Equal Protection Clause. Government action that affects race, alienage, and national origin, is subject to strict scrutiny, while government action that implicates gender and illegitimacy is subject to intermediate scrutiny. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent in determining what classifications are subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

**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: Respectfully, I would not express any opinion or projection about the status of racial preferences in public higher education fifteen years from now. Such speculation is beyond my role as magistrate judge or, if confirmed, district judge.