

**Questions for the Record**  
**Senator Grassley**

**Mark G. Mastroianni**  
**Nominee, U.S. District Judge for the District of Massachusetts**

- 1. You have worked as both a prosecutor and a defense attorney. How have these experiences prepared you to become a federal judge?**

Response: Being both a prosecutor and defense attorney has given me unique insight on the functioning of the criminal justice system. I recognize the system is adversarial and the design works to assure fairness and integrity. I have a complete understanding of how opposing sides on criminal cases will each look to the protection of the law and apply the same concepts in different ways. Legal concepts are open to good faith argument, differing views and challenge as part of advocacy in the system. However, the role of a judge is very different from that of an advocate. The judicial role in the system guarantees opposing sides are fully and fairly heard and matters are decided based on an unbiased application of the law to facts.

- 2. During your hearing I asked you about Massachusetts gun storage law and case. You discussed the concept that states have authority to impose regulations on gun rights and listed safety as one of the legitimate reason for doing so. As I'm sure you would recognize, however, at a certain point excessive regulations effectively deny the right. With respect to the individual Second Amendment right to keep and bear arms, please provide examples of regulations that would be too restrictive, such that the rights guaranteed by the Second Amendment are abridged.**

Response: An individual's Second Amendment rights to possess a firearm for lawful use is recognized by the controlling precedent of *District of Columbia v. Heller*, 554 U.S. 570 (2008). An example of regulation which is too restrictive is that struck down in *Heller* where firearms were required to be "disassembled or bound by a trigger lock at all times, rendering them inoperable" when actually possessed by the lawful owner in the home. *See id.* at 628. Additionally, any regulations which effectively operate to prohibit the exercise of the right to legally own a firearm would be violative of the Second Amendment. *See McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).

- 3. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: Gender, ethnicity or other demographic factors should have no influence on the outcome of a case.

**4. If confirmed, how will you use the Sentencing Guidelines in your decision making?**

Response: If confirmed as a judge the Federal Sentencing Guidelines will serve as guidance when considering an appropriate and fair sentence for a particular offender under the facts of the case. The Guidelines serve the important goal of ensuring uniformity and consistency in sentencing. The Guidelines establish a general range which considers a specific type of offense as well as offender characteristics and criminal history, among other things. Accordingly, the Guidelines provide an organized way to assess an offender and the particular crime and are a valuable resource to include in the overall consideration of appropriate sentencing.

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

Response: I believe patience is the most important attribute for a judge. It would be difficult to gain a full and detailed understanding of matters upon which a decision must be rendered without patience. Fairness and integrity are the cornerstones of the justice system. However, patience is necessary to thoroughly gather all information relative to a case and allow opposing sides to fully and fairly present arguments so that fairness and integrity can be relied upon to render a decision. I believe I have this necessary and important attribute for a judge to possess.

**6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament to you consider the most important, and do you meet that standard?**

Response: A judge must be thoughtful, respectful, calm, patient and open-minded to allow an argument to be fully and fairly presented and developed before making a decision. I believe I have these elements of temperament.

**7. 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: If confirmed, I will follow all binding precedent and I am committed to giving such precedent full force and effect whether or not I disagree with such precedents.

**8. 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: If I am confirmed as a judge, I would utilize the fundamental principles of legal analysis including first examining the plain language and text of a particular statute. Unambiguous language and text would resolve the matter but if ambiguity remained I would seek guidance from case law as persuasive authority including the examination of other circuits that may have an issue somewhat similar. Finally I would consider the legislative history to develop a full understanding of the matter presented as part of my approach to matters of first impression.

**9. 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 judge I would apply binding precedent in all cases including those in which I may disagree with the decision of a higher court.

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

Response: It would only be appropriate to declare a statute unconstitutional if there was a plain showing that Congress had exceeded its constitutional bounds. Respecting a presumption of constitutionality to all validly enacted statutes, if confirmed as a judge, I would rely on established precedent as a guide in such an analysis.

**11. 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, it would not be proper for a judge to rely on foreign law or “world community” views in determining the meaning of the Constitution.

**12. 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: If confirmed, I assure the Committee that I am committed to and respect my obligation to render decisions grounded in precedent and not on underlying political ideology or motivation. In my current position as District Attorney I perform my duties with this same commitment.

**13. 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: If confirmed as a judge I assure the Committee that any personal views or feelings would be put to the side and all decisions would be rendered in a fair and impartial way. I am committed to working within the fair system of justice where

matters are determined not on personal beliefs but on the neutral application of facts to the law.

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

Response: If confirmed as a judge I would utilize the court's Case Management System, having conferences scheduled soon after the filing of cases. The Case Management System will allow for schedules to be set for discovery as well as motions and other hearings. I would endeavor to decide all motions efficiently and monitor the status and development of cases through their various stages.

**15. 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 judges should take a role in controlling the pace and conduct of litigation and if confirmed I would utilize the procedures generally outlined in my response to the previous question.

**16. 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 have no previous experience as a judge but if confirmed I would thoughtfully consider all facts gathered during a case being processed and look to binding precedent in making decisions.

**17. 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 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.

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

Response: I received these questions on February 18, 2014 and drafted responses which were provided to the U.S. Department of Justice on February 20, 2014. I finalized my responses to the questions after discussing my draft with a representative of the Department of Justice and submitted my final responses on February 23, 2014.

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

Response: Yes.

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

**Mark G. Mastroianni**  
**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: If confirmed, the philosophy that would guide me is that all judicial actions must promote and honor the fundamental principles of fairness, integrity and respect for the law. I have an insufficiently detailed understanding of the philosophies and practices of individual justices to make an analogous comparison.

**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: The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) recognized that the public understanding of the Constitution, at the time it was ratified, is an important consideration relative to constitutional interpretation. If confirmed, I will follow Supreme Court and First Circuit precedent on the issue.

**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 I would not overrule precedent as that would be beyond my authority and I would be bound to follow and apply controlling 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: If confirmed, I would follow and apply *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), as well as any other binding precedent on that or any other point of law.

**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 indicated Congress can regulate three identified areas of interstate commerce. These areas are “the use of channels of interstate commerce”, the “instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities” and “activities that substantially affect interstate commerce.” See *United States v. Morrison*, 529 U.S. 598, 608-610 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed, I would apply and follow this and all other binding precedent.

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

Response: The President's authority to issue executive orders or take executive action must come from an Act of Congress or the Constitution itself. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). The Court in *Youngstown* has established an analysis for evaluating and determining the constitutionality of executive actions or orders. See *id.* at 635-638 (Jackson, J., concurring). If confirmed, I would follow the controlling precedent on this issue.

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

Response: A right is fundamental when “‘deeply rooted in this nation's history and traditions’, and ‘implicit in the concept of ordered liberty.’” See *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal citations omitted). If confirmed, I would follow the controlling precedent on this issue.

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

Response: Heightened scrutiny under the Equal Protection Clause is required by the Supreme Court when dealing with matters that burden a fundamental right or operate to the peculiar disadvantage of a suspect class. See, e.g. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439-441 (1985). Classifications included for strict scrutiny are based on race, national origin and alienage, while gender and illegitimacy are given intermediate scrutiny. *Id.* If confirmed, I would follow all controlling precedent regarding application of scrutiny under the Equal Protection Clause.

**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: My personal expectation regarding racial preferences in public higher education will play no role in any judicial decisions if I am confirmed. I would follow the holding of *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013) as well as other binding precedent on this issue.