

**Senator Chuck Grassley
Questions for the Record**

**Debra M. Brown
Nominee, U.S. District Judge for the Northern District of Mississippi**

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

Response: The most important attribute of a judge is sincere respect for the position of judge. When a judge truly respects the position, I believe the judge will necessarily execute all judicial duties with impartiality, fairness, integrity, and discipline, and apply the law to the facts of each case or controversy in an even-handed manner consistent with judicial precedent and applicable procedural rules. I have always sincerely respected the position of a judge and, if confirmed as a district court judge, will continue to respect the position in carrying out my duties.

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, consistent with the role of a public servant, should be respectful of all parties involved in the judicial process, including litigants, counsel, juries, and court staff, and should be courteous, patient, open-minded, unbiased, and an attentive listener. I believe the element of respect is most important because from it flows all those qualities in a judge demonstrating good temperament. 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. 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.

4. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not be affected by any political, economic, or philosophical influences?

Response: A judge is bound to apply the law to the facts of each case or controversy impartially, without bias, and independent of any outside influences, including political, economic, or philosophical influences. If confirmed as a district court judge, I would do so without hesitation.

5. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.

Response: The United States Supreme Court has ruled upon the constitutionality of the death penalty. If confirmed as a district court judge, I will apply the precedent of the United States Supreme Court in that regard, with my personal belief regarding the death penalty as a form of punishment playing no role.

- 6. 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 the case of first impression involved the interpretation of a statute, I would utilize the canons of statutory construction, which would include an examination of the statute's plain language; application of the plain language if not ambiguous; and if the plain language is ambiguous, to consult and analyze decisions in analogous situations of, in order of priority, the United States Supreme Court, Fifth Circuit Court of Appeals, other Circuit Courts of Appeals, and parallel federal courts. If the case of first impression does not involve the interpretation of a statute, I would consult and analyze decisions in analogous situations of, in order of priority, the United States Supreme Court, Fifth Circuit Court of Appeals, other Circuit Courts of Appeals, and parallel federal courts.

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

Response: Because a federal court is bound to apply the laws as properly enacted by Congress, a federal court should only declare a statute enacted by Congress unconstitutional when the statute violates an express provision of the Constitution or when Congress was without authority to enact the statute.

- 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. The Constitution should be interpreted based upon its text as well as the precedent of the United States Supreme Court.

- 9. What is your understanding of the workload in the Northern District of Mississippi? If confirmed, how do you intend to manage your caseload?**

Response: Based on statistical information, I understand that approximately 1,000 cases were filed in 2012 in the Northern District of Mississippi, divided fairly equally among the divisions, and that approximately 1,100 cases were pending as of December 31, 2012. If confirmed as a district court judge, I will manage my caseload by assessing each case filed to determine how it could most efficiently and effectively proceed to resolution. The assessment of each case would include a determination of whether it is susceptible to early resolution; should or must be placed over other cases in priority; may be amenable to settlement, early on or at later stages; and the amount of time it may appropriately and

realistically take to be litigated. I would also strive to resolve as expeditiously as possible all issues, including discovery matters, which could potentially delay the progress of the case; employ the assistance of the assigned magistrate judge; and supervise the progress of the case with status conferences at appropriate intervals.

10. 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 believe that judges may properly control the pace and conduct of litigation in their courts. If confirmed as a district court judge, I would do so by, among other things, evaluating the most efficient and effective means for each case to proceed to resolution; supervising the progress of cases with status conferences at appropriate intervals and making any adjustments necessary to keep the case on track; promptly ruling on all motions, including dispositive motions filed; emphasizing to parties and counsel deadlines set in the case; and promptly resolving all issues that could potentially delay the progress of the case.

11. 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: In reaching a decision in cases before me, if confirmed as a district court judge, I would look for guidance to the binding precedent of the United States Supreme Court, the Fifth Circuit Court of Appeals, and parallel federal courts in my jurisdiction, and thoughtfully apply such precedent to the facts of the case or controversy presented. I would expect the most difficult part of my transition from advocate to judge to be the criminal docket since my practice has been entirely civil. Through the intense study of criminal statutes and procedures, and consultation with other judges, among other things, I will be dedicated to achieving a successful transition.

12. 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.

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

Response: I received the questions on July 17, 2013, by e-mail from a Department of Justice representative and began drafting responses that evening. On July 18, 2013, I completed the drafting of responses and sent them to the Department of Justice representative from whom they had been received, and spoke with that representative by phone on July 21, 2013.

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

Response: Yes.

Questions for Judicial Nominees
Senator Ted Cruz
Responses of Debra Brown

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: A judge should execute all judicial duties with respect for the position, impartiality, fairness, integrity, and discipline, and apply the law to the facts of each case or controversy in accordance with judicial precedent and applicable procedural rules. I believe these same principles generally guide the judicial philosophies of United States Supreme Court Justices. Because I am not familiar with the specific judicial philosophies of any Supreme Court Justice, however, I am unable to analogize in a general, all-encompassing sense, the judicial philosophy of any one to mine.

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: A district court judge should interpret the Constitution based on precedent established by the United States Supreme Court. Where the United States Supreme Court has utilized the theory of originalism, in whatever form, to interpret the Constitution, a district court judge is bound to apply such precedent, which I would do if confirmed as a district court judge.

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: A district court judge should adhere to precedent and is not at liberty to overrule precedent no matter when that precedent is established.

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: As a binding opinion of the United States Supreme Court, I would adhere to the precedent established by *Garcia*, regardless of whether I agree or disagree with its holding or the statement quoted, if confirmed as a district court judge.

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 generally “upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature.” *United States v. Morrison*, 529 U.S. 598, 613 (2000); *see also United States v. Lopez*, 514 U.S. 549, 559 (1995). The concurring opinion by Justice Scalia in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), nonetheless states that “Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.” If confirmed as a district court judge and faced with a question regarding the scope of the Commerce Clause, I would evaluate such question against the precedent of these opinions.

Presidential Power

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

Response: The United States Supreme Court has concluded that “[t]he President’s authority to act, as with the exercise of any governmental power, ‘must stem either from an act of Congress or from the Constitution itself.’” *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). Therefore, the judicially enforceable limits on the President’s ability to issue executive orders or executive actions apply to those instances when the executive order or executive action is not authorized by Congress or the Constitution.

Individual Rights

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

Response: A right is “fundamental” for purposes of the substantive due process doctrine, as held by the United States Supreme Court, when “objectively ‘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) (citations omitted). If confirmed as a district court judge, I would follow the precedent of the United States Supreme Court.

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

Response: Precedent of the United States Supreme Court has identified certain classifications subject to heightened scrutiny under the Equal Protection Clause. A classification is subject to “strict scrutiny” if it differentiates persons on the basis of race, national origin or alienage, or when state laws infringe upon personal rights protected by the Constitution. A classification is

subject to an “intermediate level” of scrutiny if it differentiates persons on the basis of gender or illegitimacy of birth. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985).

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 will follow binding Supreme Court precedent on the issue of the necessity of racial preferences in public higher education, including *Grutter*, if confirmed as a district court judge, independent of any personal expectations or views I may have.