

**Senator Chuck Grassley
Questions for the Record**

**Timothy L. Brooks
Nominee, U.S. District Judge for the Western District of Arkansas**

- 1. According to your questionnaire, it appears that the majority of your legal experience is limited to civil litigation. As a district judge, you will be asked to preside over both civil and criminal cases.**

a. What experience do you have with criminal law?

Response: I handled criminal cases in the early part of my career. Although I subsequently focused my practice on civil cases, my firm routinely handles all manner of complex criminal litigation in federal and state courts, and I have had exposure to criminal law and procedure through my partners' cases over the years.

b. What steps have you taken to familiarize yourself with the area of criminal law?

Response: I have been studying the federal criminal code, the Federal Rules of Criminal Procedure, and the sentencing guidelines. I have been observing change of pleas and sentencing hearings, and recently attended a complete criminal trial in federal court.

c. What steps do you plan to take to get up to speed, should you be confirmed?

Response: I have enrolled in a CLE seminar for advanced training in the sentencing guidelines, and I plan to continue studying criminal law and procedure until I have mastered this area of law.

- 2. You have spent your entire legal career as an advocate. How will you approach the transition from advocate to judge?**

Response: As a private attorney I advocate on behalf of my client's interests and objectives – whether that be as a plaintiff or as a defendant. If confirmed as a judge, however, I will first and foremost recognize and understand the primary distinction of my new role. A judge is a neutral arbiter – charged with the solemn responsibility to steadfastly apply the rule of law to the facts and issues before the court. I would approach each case with an open mind – understanding the points of view and arguments of each side.

- 3. How will you use the Sentencing Guidelines to guide you in criminal cases?**

Response: The underlying purposes for which the Guidelines were originally enacted are as true and appropriate today as ever. Although no longer considered mandatory, if confirmed I will use and follow the Sentencing Guidelines as the foundation and central guidepost for all sentencing decisions.

4. **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. The desire and ability to understand each litigant's point of view is an important judicial attribute, however, a judge should never allow sympathy, passion, or prejudice to engender favor for one party over another.

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

Response: A respectful attitude is an important common thread woven through the hallmark qualities of every good judge. A judge should have respect for precedent and the rule of law; respect for the role of Congress as the voice of the people in the enactment of statutory law; respect for the administration of justice by always being fair and impartial; respect for all who come before the court – including the parties, lawyers, witnesses, jurors, and court staff; and respect for the responsibilities of the court by working hard, and being diligent, thorough, and decisive. I understand the importance of a respectful attitude and believe I possess this attribute.

6. **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: Good judicial temperament involves the ability to be open-minded, objective, fair, and impartial. Most importantly, a judge's attitude and demeanor should evidence respect and civility throughout all aspects of the court's work. I would meet this standard if confirmed as a judge.

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. 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.

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 confirmed and presented with a case involving statutory interpretation, I would look first to the text of the statute. If the text was ambiguous I would look to legislative history to illuminate the meaning and purpose of the text. I would look to analogous or related precedent of the Supreme Court and the Eighth Circuit Court of Appeals. I would also be guided by any applicable and well-reasoned persuasive authority from other circuits and/or district courts which may have already addressed the same issue.

- 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: I would steadfastly apply any applicable precedent of the Supreme Court and the Eighth Circuit Court of Appeals, even if I personally believed those decisions to be errant.

- 10. 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. A court should avoid ruling on constitutionality if there is a non-constitutional basis on which to resolve the issue. Only where Congress has clearly exceeded its authority should a court consider invalidating the statute on constitutional grounds.

- 11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: A judge's decisions should never – under any circumstance – be premised on or motivated by political ideology. I give you my unqualified assurances that, if confirmed, my decisions will be grounded in the text and precedent, and I will make decisions based solely on the faithful application of the rule of law to the facts and issues at hand.

- 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: Fairness and impartiality are bedrock judicial principles. If confirmed, I will disregard any personal views I may have. I will apply the applicable rule of law to the facts and issues before the court in a fair, open-minded, objective, and impartial fashion.

- 13. 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. I am unaware of any circumstances where it would be appropriate for a judge to rely upon foreign law, or the views of the “world community,” to determine the meaning of the Constitution.

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

Response: The Western District of Arkansas has a longstanding reputation of running one of the most efficient dockets in the country. I would strive to maintain and advance the court's reputation. If confirmed, I would use my experience as a trial attorney – and my understanding of which types of cases are likely to require more of the court's time than others – to fine tune the court's scheduling policies and procedures. I would actively participate in pre-trial conferences and the entry of case specific scheduling orders. I would

closely monitor my docket, promptly conduct hearings as necessary, and issue rulings on pending motions in a timely fashion. I would make good use of the magistrate judges in my district, and I would make use of all available technology to improve the efficiencies of the court.

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: Yes, judges should be actively involved in controlling the pace and conduct of litigation. If confirmed, I will actively participate in pre-trial conferences and the entry of case specific scheduling orders. I would closely monitor my docket, promptly conduct hearings as necessary, and issue rulings on pending motions in a timely fashion. I would make good use of the magistrate judges in my district, and I would make use of all available technology to improve the efficiencies of the court.

16. 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 will apply the applicable law to the facts and issues before the court in a fair and impartial manner. I will faithfully adhere to precedent of the Supreme Court and the Eighth Circuit Court of Appeals. In cases of statutory interpretation, I will look to the text of the statute, and if ambiguous to legislative history. Where there is no controlling precedent, I will search for well-reasoned persuasive authority from other circuits and district courts. Leaving behind private practice, and the ensuing isolation from the collegiality of my partners, friends, and colleagues in the bar, will be the most difficult part of the transition. I also recognize that I don't yet know what I don't know about being a judge. Yet, I am very excited about the opportunity to open a new chapter in my career – where I can use my experience and skills in public service.

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, 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 nature 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: I am not aware of any such endorsements.

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

Response: These questions were emailed to me by the Department of Justice on the afternoon of September 18th. I began drafting my responses that same evening. On September 19th I edited my responses and emailed them to the Department of Justice. On September 20th I discussed my responses with a representative of the Department of Justice and authorized submission of my responses to the United States Senate.

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

Response: Yes.

Questions for the Record
Senator Ted Cruz

Timothy L. Brooks
Nominee, U.S. District Judge for the Western District of Arkansas

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: As a private practitioner for the last 24 years – representing plaintiffs and defendants in a wide variety of legal matters – I have not developed a judicial philosophy. Nor have I read Supreme Court decisions with the aim of reconciling the philosophies of particular jurists, although I do have great respect for the Justices on each of these Courts. I can explain the judicial principles I would uphold if confirmed as a district court judge. I would steadfastly apply the rule of law to the facts and issues at hand. I would be open-minded, fair, and impartial. I would faithfully respect precedent, and limit rulings to the issues necessary for disposition. I understand and would demonstrate great respect for the role of Congress in the enactment of laws on behalf of the American people.

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 have not studied the different methodologies used to interpret the text of the Constitution. I do know that the Supreme Court discussed and applied originalism in finding an individual private right to possess weapons under the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a district court judge, I would faithfully adhere to precedent and the appropriate methodologies for constitutional interpretation as determined by the Supreme Court and the Eighth Circuit Court of Appeals.

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 judge, I would not overrule 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: The stated quote is a holding of the Supreme Court, and as such would be binding precedent if I were to be confirmed as a 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 Supreme Court has stated: "Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained." *United States v. Morrison*, 529 U.S. 598, 610 (2000) (quoting *United States v. Lopez*, 514 U.S. 549, 560 (1995)). In those cases, the Court invalidated congressional action by emphasizing non-economic relationships. In a more recent concurring opinion, Justice Scalia observed that "Congress may regulate even non-economic 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). If confirmed and confronted with this question as a district court judge, I would apply Commerce Clause precedent of the Supreme Court and the Eighth Circuit Court of Appeals to the particular facts and circumstances at hand, and limit my ruling to the issues necessary for decision.

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

Response: I generally understand that the President's power to issue executive orders "...must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet and Tube v. Sawyer*, 343 U.S. 579, 585 (1952). This constraint is judicially enforceable within the context of a justiciable case or controversy.

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

Response: The Supreme Court has held that a right is "fundamental" for purposes of substantive due process analysis when it is "objectively deeply rooted in the Nation's history and tradition, ... and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotation marks and citations omitted). If confirmed, I would apply this and all other applicable Supreme Court precedent if confronted with this question.

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

Response: The Supreme Court has applied heightened scrutiny under the Equal Protection Clause to a narrow set of individual classifications, such as gender, race, religion, and ethnicity. The Court has also applied heightened scrutiny to non-suspect classifications when legislation impinges on a fundamental right. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (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: In *Grutter*, the Supreme Court determined that the Equal Protection Clause did not prohibit the University of Michigan's narrowly tailored use of a "race-conscious" admissions policy – as contrasted to a pure race quota system. It was ten years ago that Justice O'Connor opined that in 25 years the use of racial preferences would no longer be necessary. *Grutter*, 539 U.S. at 343 (2003). More recently, the Supreme Court considered the University of Texas' admissions policy – which had been modeled after the Court's holding in *Grutter* – and emphasized that the strict scrutiny standard of review must be applied when a court reviews admissions policies using racial categories or classifications. *Fisher v. University of Texas*, 133 S.Ct. 2411, 2421 (2013) (remanded for further proceedings). Thus, if confirmed and confronted with this question, I would apply controlling precedent to the particular facts and circumstances at hand, and limit my ruling to the issues necessary for decision.