

Senator Chuck Grassley
Questions for the Record

Pamela L. Reeves
Nominee, U.S. District Judge for the Eastern District of Tennessee

- 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 have served as co-counsel on one criminal case in federal court. Additionally, early in my legal practice, I represented many juveniles in juvenile court on minor criminal offenses. Finally, in the course of my work defending law enforcement agencies across the state of Tennessee, I became familiar with standards for probable cause searches and arrests.

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

Response: Since receiving the nomination, I have begun familiarizing myself with the Sentencing Guidelines and the Federal Rules of Criminal Procedure by personally studying these resources and attending educational seminars. I have also attended two criminal jury trials in federal court and one detention hearing. Finally, I have spoken to a number of criminal defense lawyers to hear their thoughts and concerns, and I have met for several hours with the chief criminal attorney at the U.S. Attorney's office to learn about his office and procedures.

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

Response: If confirmed, I would approach the challenge of becoming more familiar with federal criminal issues the way I have always approached any task that I undertake. I would devote whatever time is necessary to become familiar with federal criminal statutes, the Federal Rules of Criminal Procedure, applicable case law and the Sentencing Guidelines. I will also seek guidance from the other judges in the district.

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

Response: While the U.S. Supreme Court has held in *United States v. Booker*, 543 U.S. 220 (2005) that the Sentencing Guidelines are no longer mandatory, it is still important for criminal defendants and their attorneys to be able to assess their options realistically, and consistency in sentencing is helpful to that process. I will depart from the properly calculated sentences only when appropriate factors warrant a departure.

- 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. While I believe it is always important for judges to be respectful of all who appear before that judge, it is never the role of a judge to favor one party over another.

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

Response: The most important attribute of a judge is the ability to be fair to the parties who appear in the court and to make decisions based on the facts of the particular situation and applicable law. Judges must necessarily make some parties unhappy with their rulings, but nothing that a judge says or does should make any person feel that the judge is unfair or partial to one side or the other. I possess the ability to be fair to all parties and the commitment to make decisions based on the facts and law of the particular situation.

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: Judges must be patient and respectful to the parties, to the legal process and to the rule of law. Judges must be willing to work hard to ensure that the parties who appear before them feel that they have had a fair and impartial hearing. I have the ability to show lawyers and parties patience and respect, and I am willing to adhere to the rule of law.

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: Simply stated, personal beliefs have no place in the judicial system. I am committed to faithfully following the precedents of the United States Supreme Court and the Sixth Circuit Court of Appeals.

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: The starting point for analyzing a case of first impression is to first determine if it is truly a case of first impression. If I am satisfied that it is a case of first impression, I will begin my analysis by reviewing the language of the applicable statute or constitutional provision to ascertain the plain meaning of the text and apply existing canons of statutory construction. If the text is ambiguous, I would review analogous case law that could be instructional or applicable to the situation from the U.S. Supreme Court, the Sixth Circuit Court of Appeals, other United States Circuit Courts, and other United States District Courts. Finally, I would attempt to resolve the situation with the narrowest possible holding based on the specific facts of the situation.

- 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 concept of *stare decisis* is the bedrock upon which our legal system is based. I will follow binding precedent from the U.S. Supreme Court or the Sixth Circuit Court of Appeals without regard to my personal beliefs.

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

Response: A statute properly enacted by Congress should be presumed to be constitutional. *See United States v. Morrison*, 529 U.S. 598, 607 (2000). Accordingly, properly enacted statutes should be invalidated only in situations where it is clear that the statute exceeds the authority of the Constitution or where it directly contradicts a provision of the Constitution.

- 10. 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: As I have stated above in response to questions 6 and 8, personal views, whether they are based on political ideology or other motivation, have no place on the bench. The responsibility of the judge is to follow binding precedent and applicable Constitutional and statutory provisions, not to attempt to use the bench to legislate.

- 11. 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 reputation in the legal community reflects that the lawyers I have worked with, the judges before whom I have appeared, and the many parties I have mediated with have found me to be fair and impartial and someone who treats all persons involved in the legal system with professionalism and respect. If confirmed, I will continue to maintain those traits on the bench.

- 12. 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.

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

Response: I would review the cases to which I have been assigned and work with counsel and the law clerks to set realistic schedules, taking into consideration the complexity of the issues and the need for expedited trial schedules on criminal matters. I will work with the magistrate judges to assist lawyers in promptly resolving discovery issues, and I will make prompt resolution of dispositive motions and other pretrial motions a priority.

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: My years as a private practitioner have taught me that most lawyers are motivated largely by deadlines. Lawyers need to know that the deadlines are going to be reasonably enforced by the presiding judge. For that reason, judges need to play a role in controlling the litigation process. As I stated in response to question 13, I would attempt to set realistic trial schedules, provide guidance and oversight as needed to keep cases on track and work hard to ensure that parties get timely rulings on matters that will allow attorneys to realistically evaluate their client's positions. My experience with alternative dispute resolution will help me assess whether certain cases may be appropriate for mediation.

15. 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: While I have never served as a judge, I have had the opportunity on several occasions to sit as an arbitrator and special hearing officer. In those situations, I have been able to effectively manage the prehearing proceedings, preside over actual hearings, listen to the testimony of witnesses, rule on objections and evaluate the credibility of the witnesses. Based on the record before me, I have then applied the applicable law and issued findings of fact and conclusions of law. If confirmed, I would approach the judicial experience with the same processes I have used in these instances. I am hopeful that my previous experiences in these quasi-judicial settings will help me make the transition as seamless as possible. If I am confirmed as a U.S. District Judge, I anticipate that getting up to speed on the large number of files that I will be immediately assigned will be a challenge.

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 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: No.

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

Response: I received my questions by email on October 2, 2013. I began working on my answers shortly thereafter and completed a draft of the answers which was submitted to representatives of the Department of Justice on October 17, 2013. I discussed the answers with a representative of the Justice Department and approved the submission of these answers to the Justice Department on October 25, 2013 for filing with the Senate Judiciary Committee.

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

Response: Yes.

Questions for the Record
Senator Ted Cruz

Pamela L. Reeves
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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: Having not yet had the opportunity to serve as a judge, it is difficult for me to say with certainty what my judicial philosophy might be. Perhaps it would be more helpful for me to say that the qualities I admire most in judges include patience, respect for the litigants who appear in their court, and a willingness to keep an open mind until all parties have had an opportunity to fully and fairly present their cases. While I am not a student of judicial philosophy, I have always admired Justice Sandra Day O’Connor, in part because of the grace and humility with which she dealt with the pressure of being the first female on the United States Supreme Court. She also possessed two additional traits that I would hope to emulate if I am fortunate to be confirmed. First, she generally sought to keep her decisions narrow. Second, she was perceived as a justice who kept an open mind and made decisions based on the specifics of the case. I would seek to incorporate both of these traits into my judicial philosophy and practice, if confirmed.

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 United States Supreme Court has employed originalism in interpreting the U.S. Constitution. For example, the Supreme Court looked to the original public meaning of the U.S. Constitution in its decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a U.S. District Judge, I will apply applicable U.S. Supreme Court and Sixth Circuit precedent on issues involving the interpretation of the U.S. Constitution in the same manner that I would apply binding precedent to all other issues.

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 U.S. District Judge, I will not have authority to overrule precedent from the Sixth Circuit Court of Appeals or from the U.S. Supreme Court.

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 Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) remains binding precedent. If I am confirmed, I will apply this and all binding precedent without regard to whether I agree or disagree with the precedent.

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 articulated three categories of activity that Congress may regulate under the Commerce Clause of the U.S. Constitution: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *See United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *Gonzales v. Reich*, 545 U.S. 1 (2005). If confirmed, I would adhere to the precedents set forth in those cases and any other binding precedent on the issue of Congress' Commerce Clause power from the U.S. Supreme Court or the Sixth Circuit.

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

Response: In *Medellin v. Texas*, 552 U.S. 491, 524 (2008), the U.S. Supreme Court held 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.'" (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). Applying this precedent, and assuming the question is presented in a justiciable case or controversy, the judiciary may invalidate executive orders or actions when the act or order in question violates the Constitution or federal law.

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

Response: It has long been established that a fundamental right, for purposes of the substantive due process doctrine, is a right that is "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 [it] were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and quotation marks omitted). If confirmed as a U.S. District Judge, I would apply this and other precedent established by the U.S. Supreme Court and the Sixth Circuit Court of Appeals in analyzing fundamental rights.

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

Response: The U.S. Supreme Court has held that classifications based on race, alienage, national origin, and gender are subject to heightened scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). If confirmed as a U.S. District Judge, I would apply Supreme Court and Sixth Circuit precedent in determining whether a particular classification should be subjected to heightened scrutiny.

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: *Grutter v. Bollinger* is binding Supreme Court precedent. If I am fortunate to be confirmed as a U.S. District Judge, I will apply Supreme Court and Sixth Circuit precedent without regard to my personal expectations.