

**Senator Chuck Grassley  
Questions for the Record**

**Stanley Allen Bastian  
Nominee, U.S. District Judge for the Eastern District of Washington**

- 1. You said in 2007 that diversity is a journey not a destination. “The public must trust that justice will be delivered in a fair and impartial manner, but, this trust can be easily lost if lawyers and judges do not reflect the public they serve.”**

- a. Are you saying that the public cannot trust people who do not reflect their personal demographics?**

Response: It was not my intent to imply that the public cannot trust people who do not reflect their personal demographics. My comment was intended to emphasize two points: (1) diversity within the legal profession is an important goal, and (2) the public trust in our system of justice is strengthened when the legal and judicial professions are perceived to be open and available to everyone regardless of their gender, ethnicity, or other demographic factors.

- b. Do you think individuals who are not minorities are less capable of administering justice?**

Response: No, I believe that fair and impartial judges can and should come from all backgrounds.

- 2. In your hearing you said that you should consider the “vantage point of the defendant”. Please explain what you mean by this. What consideration should a defendant’s perspective be given by a judge in making judicial decisions?**

Response: During my confirmation hearing, another district court nominee used the phrase “vantage point of the defendant.” Although I am not sure what he meant by this phrase, if I were confirmed as a District Judge, I would consider the vantage point of both parties in neutrally applying the law to the facts.

- 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: No, the judge’s gender, ethnicity, or other demographic factors should not have any influence in the outcome of a case. All judges should be fair, patient, and impartial and should be committed to applying the rule of law in every case.

- 4. In 2007 you used your position as President of the Washington State Bar Association to advocate for the “fundamental right” to government-provided counsel for low-income litigants in civil matters. You also said that, “[i]t will take time to convince the public and our lawmakers that the idea is worth the obvious expense. However, it is time that**

**we recognize the importance of civil legal aid and treat it in a similar fashion as public defenders for criminal defendants.”**

- a. As a judge you would preside over indigent pro se litigants. Would you remain impartial in those circumstances that you feel one party is being “denied equal justice” because they are not represented?**

Response: Yes, if confirmed as a District Judge, I will remain impartial in all cases, even cases in which one or both parties are not represented by an attorney.

- b. Would you be clear with the litigants that you are not an advocate for either party, regardless of their representation?**

Response: Yes.

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

Response: Judges should adhere to the rule of law and decide each case by applying the binding precedent to the relevant facts. Judges should work hard and be fair, patient, impartial and open-minded. They should treat all parties with civility, respect, and dignity. I have these attributes and have applied them during my 30-year legal career.

- 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: The appropriate temperament of a judge includes fairness, patience, impartiality, and civility. I believe that I possess these attributes and that I have consistently applied them during my legal career.

- 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: I am committed to following the precedents of higher courts faithfully and giving them full force and effect regardless of whether I agree or disagree with those 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: In adjudicating a case of first impression, I would study and apply the text of the applicable statute or regulation. If the plain meaning of the statute was not clear then I would

review the statutory framework as a whole and resolve ambiguities by applying well established rules regarding statutory construction. I would also look to analogous precedents from the Supreme Court and the Ninth Circuit, as well as seek guidance from persuasive opinions of the other Courts of Appeals.

- 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 apply binding precedents from the Supreme Court and the Ninth Circuit without regard to whether I believed the court erred in the decision.

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

Response: Federal courts should avoid reaching constitutional questions when possible, and should always begin their analysis of a federal statute with the presumption that the statute is constitutional. Statutes enacted by Congress are presumed to be constitutional and federal courts should find them to be unconstitutional “only upon a plain showing that Congress has exceeded its constitutional bounds.” *United States v. Morrison*, 529 U.S. 598, 607 (2000). If confirmed as a District Judge, I would follow binding Supreme Court precedent on this issue.

- 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.

- 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: I understand that, if confirmed as a District Judge, my duty will be to put aside any personal views, motivations, and political ideology when making rulings on cases. I am prepared to decide each case impartially by applying binding precedent to the relevant facts of the case at bar. During my 30-year career as a lawyer in private practice, I have never used my personal views or any political ideology to guide my work as an advocate for my clients.

- 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: I am prepared to decide each case impartially after a fair and open hearing by applying binding precedent to the relevant facts of the case at bar. My decisions as a District Judge will be made regardless of my personal views, motivations, and political ideology.

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

Response: If confirmed, I will play an active role in the cases assigned to my court by scheduling case management conferences, promptly deciding motions, encouraging mediation or settlement conferences, and monitoring the cases when necessary to ensure the rules of discovery are not abused. I intend to actively monitor my caseload to help ensure the cases are resolved in a timely, efficient, and cost-effective manner.

**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, District Judges should play a role in controlling the pace and conduct of litigation. This is important to help resolve disputes in a timely, efficient, and cost-effective manner. If confirmed, I will play an active role in the cases assigned to my court by scheduling case management conferences, promptly deciding motions, encouraging mediation or settlement conferences, and monitoring the cases when necessary to ensure the rules of discovery are not abused.

**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: I will reach decisions in cases by determining the claims made by the parties, the issues that require a decision, and the applicable standard of review. These determinations will be made after reviewing the pleadings, testimony, and evidence submitted. I will then apply the binding precedent to the relevant facts of the case at bar. The most difficult part of the transition for me will be transitioning from serving as an advocate for my clients to serving as an impartial decision maker.

**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 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 prepared my responses to these questions and submitted them to the Department of Justice. I then edited my responses after receiving comments from the DOJ. Finally, I authorized the DOJ to submit these responses to the Committee on my behalf.

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

Response: Yes.

**Questions for the Record  
Senator Ted Cruz**

**Stanley Allen Bastian  
Nominee, U.S. District Court for the Eastern District of Washington**

**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: Judges should be committed to the rule of law, which means that all cases should be decided impartially by applying binding precedent to the relevant facts. Judges should be fair, patient, and open-minded and should treat all parties with respect and civility. If confirmed, I intend to follow this judicial approach. I have not studied the judicial philosophy of the Supreme Court Justices and therefore cannot identify a Justice whose judicial philosophy is most analogous 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: If confirmed as a District Judge, I will follow Supreme Court precedent regarding the use of originalism to interpret the Constitution. For example, in the case of *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) the Supreme Court held that the public understanding of a legal text in the time after enactment plays a critical role in constitutional interpretation. I will follow this and all other Supreme Court precedent.

**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: I would never overrule binding precedent if confirmed as a District Judge.

**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 case of *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) is binding precedent. If confirmed as a District Judge, I would be bound to follow *Garcia* and all other precedent from the Supreme Court and the Ninth Circuit, regardless of any disagreement I may or may not have.

**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 recognized limits on the power of Congress to regulate non-economic activity pursuant to the Commerce Clause. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). However, in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia noted that “Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.” *Id.* at 37 (Scalia, J., concurring). If confirmed as a District Judge, I intend to follow all binding Supreme Court and Ninth Circuit precedent regarding the issue of Congressional regulatory powers.

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

Response: Federal courts should avoid reaching constitutional questions when possible. However, the Supreme Court has held that the President’s authority to issue executive orders or take executive actions must be derived from either an act of Congress or the Constitution. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I will follow Supreme Court precedent on this issue.

**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 the substantive due process doctrine only if it is deeply rooted in our nation’s history and tradition and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). *See also, Chavez v. Martinez*, 538 U.S. 760, 775 (2003). If confirmed, I will follow this and all other precedent from the Supreme Court and the Ninth Circuit concerning the substantive due process doctrine.

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

Response: The Supreme Court has held that heightened scrutiny under the Equal Protection Clause is appropriate when a classification burdens a fundamental right or when it differentiates categories such as race, national origin, or gender. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985); *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). If confirmed, I will closely follow binding precedent on this issue.

**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: If confirmed as a District Judge, I would follow Supreme Court precedent on the use of racial preferences in university admissions without regard to my own personal expectations or opinions.