

Response of Andrew P. Gordon
Nominee to be United States District Judge for the District of Nevada
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: Judges must be fair, must not pre-judge a case or issue, and must treat all parties with respect and dignity. Judges should faithfully follow the legal precedents of the Supreme Court and the Courts of Appeals. Federal judges must keep in mind that their jurisdiction and their role in government are limited; judges must respect, and not usurp, the roles of the legislative and executive branches. A judge must remember that he is a public servant, and that the courts belong to the citizens.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: For the past 10 years, I have devoted a significant portion of my practice to serving as a private arbitrator and mediator. I have always treated the parties and their counsel with respect, regardless of their station in life. I do not pre-judge cases or issues, and I listen carefully to the arguments and evidence. If confirmed as a judge, I will continue to approach cases in the same way.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of *stare decisis*? How does the commitment to *stare decisis* vary depending on the court?**

Response: Business owners, corporate boards, and individual citizens depend on consistency and predictability in the law, so they can make decisions and govern themselves accordingly. *Stare Decisis* is critical to ensuring that predictability. The law and the outcome of cases should not change based upon the individual judge.

**Response of Andrew P. Gordon
Nominee to be United States District Judge for the District of Nevada
to the Written Questions of Senator Chuck Grassley**

- 1. At your hearing, I asked you about a paper you had written some years ago. I specifically asked if your views had changed; you replied Yes, “Somewhat.” Can you be more specific on how your views have changed? For example:**

- a. Do prostitution laws “discriminate against women?”**

Response: I wrote the paper to which you are referring while I was a college student, and I have not researched the legal or policy issues regarding such laws, or devoted any significant attention to the paper itself, since writing it 28 years ago. Therefore, I do not know the current state of prostitution laws. However, to the extent that women are prosecuted for prostitution but their male customers are not prosecuted for patronizing them (or if no law prohibits such patronage), that could be considered discriminatory towards women. As stated above, however, I have not performed the research to determine whether such discrimination actually exists today.

- b. Is there any government interest in the private conduct between consenting adults?**

Response: It is up to Congress and state legislatures to determine which conduct to regulate, including private conduct between consenting adults. The job of the court is to faithfully apply those laws and the United States Constitution.

- c. Are there other conclusions you drew in your paper that you would clarify or revise – please explain in detail.**

Response: As stated above, I wrote the paper 28 years ago. It is likely that the paper contains some conclusions that I would not reach today, or that I would phrase differently. Because I have not studied these issues since writing the paper, I cannot identify which specific statements I would clarify or revise if I were to address the subject today. In any event, if I were confirmed as a district court judge and presented with a case involving prostitution or any other issue, my decision would be based solely on the law – any personal views I had would play no role.

- 2. Your college paper on prostitution has somewhat of a libertarian undercurrent. Similarly, we are seeing a small but growing trend along these lines in drug laws in some states. Recently, a few states and local jurisdictions have legalized marijuana.**

- a. If Nevada legalized marijuana, how would you approach a case where there was a conflict between the state law and federal drug laws?**

Response: First, pursuant to the supremacy clause, state statutes cannot trump federal statutes. I would look to the legal precedents on the supremacy clause from the Supreme Court and from within my Circuit Court of Appeals, then from within my district, and then from other circuit and district courts. Absent any precedent on point, I would look for cases analyzing analogous statutes.

b. Should state law have any influence on a judges' enforcement or upholding of the constitutionality of a federal statute?

Response: Pursuant to the supremacy clause, state statutes cannot trump federal statutes. State law generally does not play a role in interpretation of the Constitution. However, the Supreme Court has occasionally looked to state law in the Eighth Amendment context. If confirmed as a district judge, I would follow the precedents of the Supreme Court.

c. What if the executive branch declines to enforce federal law on a uniform basis? Suppose the U.S. Attorney for the District of Nevada continued to prosecute individuals under federal drug laws even while federal authorities might decline to prosecute in other States where marijuana has been legalized? Would that have any bearing on how you would approach the case?

Response: I am not familiar with the law in this area, and cannot say what, if any, bearing those facts might have on the legal analysis. If confirmed as a district judge and I am presented with a case raising these issues, I would faithfully follow the United States Constitution and the legal precedents of the Supreme Court.

3. Does the executive branch's failure to enforce a constitutionally-sound law unilaterally invalidate the law?

Response: No.

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

Response: I do not believe there is one "most important" attribute of a judge, but rather many important attributes. Judges should faithfully follow the legal precedents of the Supreme Court and the Courts of Appeals. Judges must be fair, must be patient and careful listeners, must not pre-judge a case or issue, and must treat all parties with respect and dignity. Federal judges must keep in mind that their jurisdiction is limited, and they must respect, and not usurp, the roles of the legislative and executive branches of government. I possess all of these traits.

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: A judge must be patient and courteous, treating the parties with respect and listening carefully to them. A judge must keep his ego in check, must remember that he is a public servant, and must remember that the courts belong to “we the people.” Having served as a private arbitrator and mediator for more than 10 years, I believe I meet these standards.

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: Yes.

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: I would begin with the plain language of the Constitution and the statute at issue. If the language is clear and the answer is found in the plain language, the inquiry is over. If not, and if there were no precedents from the Supreme Court or the Ninth Circuit Court of Appeals, I would look for legal precedent from the other circuits. Absent that, I would look for cases analyzing analogous statutes. I also would look to the context of the specific statute within the broader statutory scheme. If necessary, I would look for legislative history for some guidance.

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: I would follow the precedents of the Supreme Court and the Court of Appeals.

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

Response: Statutes are strongly presumed to be constitutional, and if the statute can reasonably be interpreted as constitutional, it should be upheld. If, based upon precedents of the Supreme Court and the Court of Appeals, a statute clearly violates a

provision of the Constitution and it cannot be interpreted as constitutional, it should be declared as unconstitutional.

- 10. 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?**

Response: No.

- 11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: In my 25 years of practice, I have managed my heavy caseload by calendaring every deadline and building in reminders of upcoming deadlines. I would continue that as a judge. In addition, I would timely address motions, and I would strive to keep the litigants on track and meeting deadlines, to avoid delays. I also would encourage parties to consider settlement where appropriate.

- 12. 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: Judges have a significant role in controlling the pace and conduct of litigation. If confirmed, I would work with the magistrate judges to ensure that appropriate Discovery Plans and Scheduling Orders are entered; I would enforce deadlines; I would schedule status checks with the litigants as necessary to keep them on track; and I would timely address motions filed by the parties. I also would encourage parties to consider settlement where appropriate.

- 13. 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: For the past 10 years, I have devoted a significant portion of my practice to serving as a private arbitrator and mediator. Thus, I have experience ruling upon motions, listening to witnesses, weighing evidence, and deciding cases. If confirmed as a judge, I will continue to approach cases in the same way: keeping an open mind, listening carefully to the arguments of counsel and the testimony of witnesses, conducting legal research as needed, and relying on the precedents of the Supreme Court. I expect that the most difficult part of my transition will be in the area of criminal law. As I testified at my confirmation hearing, I will work hard to learn this area.

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

Response: I reviewed the questions and personally drafted my answers on December 20, 2012. I reviewed my answers with an official from the Department of Justice before submitting them to the Committee.

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

Response: Yes.

Response of Andrew P. Gordon
Nominee to be United States District Judge for the District of Nevada
to the Written Questions of Senator Tom Coburn, M.D.

- 1. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

a. If not, please explain.

Response: The Constitution expresses the core concepts and foundations of our government and the fundamental rights of citizens. Those principles do not change over time, except through Constitutional amendment.

- 2. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No.

a. If not, please explain.

Response: The core concepts and principles of the Constitution do not change over time. District judges are to follow the legal precedents issued by the Supreme Court of the United States and the Courts of Appeals. If those precedents evolve over time (e.g., from *Plessy v. Ferguson* to *Brown v. Board of Education*), district judges are bound to abide by those new precedents.

- 3. What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

Response: I would begin with the plain language of the Constitution and the statute at issue. If the statute can be reasonably interpreted as constitutional, the inquiry is over. If not, I would look to the precedents of the Supreme Court. If there were none, I would look to precedents within my Circuit Court of Appeals, then from within my district, and then from other circuit and district courts. Absent any precedent on point, I would look for cases analyzing the constitutionality of analogous statutes.

- 4. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy’s analysis?**

Response: I have not studied that opinion. In any event, as a prospective judge, I do not believe I should express a personal opinion about any Supreme Court decision. If confirmed, I would faithfully follow all decisions of the Supreme Court because they are binding precedent.

- a. When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

Response: The laws and traditions of foreign countries do not control the interpretation of the Constitution of the United States. The Supreme Court has held that reference to the laws of the various states is permissible in certain circumstances. If confirmed as a district judge, I would follow the precedents of the Supreme Court.

- i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: As set forth above, I do not believe the laws and traditions of foreign countries control the interpretation of the Constitution.

- 5. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: Judges should not rely on foreign laws or decisions to determine the meaning of the Constitution.

- a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: Unless directed to do so by a legal precedent of the Supreme Court, I cannot think of such a circumstance.

- b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: No.