

Senator Chuck Grassley
Questions for the Record
Daniel D. Crabtree
Nominee, U.S. District Court for the District of Kansas

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

Response: While it is difficult for me to identify just one attribute as the single most important, I believe objectivity, the ability to keep an open mind until the case reaches a procedural stage where decision-making is appropriate, is an essential attribute for a judge. This characteristic enables a judge to apply precedent faithfully in each case. I believe I possess this attribute.

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 should treat all parties and counsel respectfully and with civility. Also, I believe patience is an important component of judicial temperament because it enables a judge to maintain impartiality, listen and understand each party's arguments, and consider them fully before making decisions. I believe my personal temperament would enable me, if confirmed, to honor these standards.

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. 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 this principle fully.

4. 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, I would follow the precedent of the Supreme Court and Tenth Circuit to identify the sources I should consult to resolve the novel issue and the order in which I should consult them. As an example, in a case involving statutory interpretation, I believe these authorities would direct me, first, to examine the text of the statute carefully. If the statutory text answers the question, I believe those legal authorities would direct me to apply the text of the statute enacted by the Congress and proceed no further. If the text of the statute does not provide an answer to the question, then I would apply the principles of statutory construction specified by the controlling authorities, whether from the Supreme Court or the Tenth Circuit. I also would consult decisions by other courts that, though not binding, may have discussed the issue.

5. **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: If confirmed, I would apply the precedential rule adopted by the Supreme Court or the Tenth Circuit, as the case may be.

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

Response: Judging the constitutionality of a statute, as the Supreme Court has said, is the gravest and most delicate duty a court is called to perform. A court may invalidate a statute enacted by Congress only upon a plain showing that Congress has exceeded its constitutional boundaries and even then, a court must first determine if there is a means to decide the dispute without reaching the constitutional issue.

7. **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 only qualification I am aware of is that the Supreme Court has consulted English common law to discern the meaning of some provisions adopted in our Constitution.

8. **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 have a clear understanding that a judge's political or ideological views can play no role in judicial decision-making. Judges must reach decisions impartially by applying the governing legal principles to the material facts via the appropriate procedural mechanism.

9. **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: During my 32 years as a trial lawyer, I have done my very best to treat judges, opposing parties, and counsel respectfully. I think this approach, while important in every case, is especially important in hotly contested cases. I hope this practice will help assure the Committee and future litigants that, if confirmed, I will treat all parties fairly and impartially.

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: I do. If confirmed, I would serve in the District of Kansas. This Court has a long tradition of careful and close case management. Historically, it has placed cases on schedules by adopting comprehensive Scheduling Orders at the outset of the case. These

orders schedule each aspect of the action all the way through the start of trial. Also, the District of Kansas has utilized the skill of its Magistrate Judges to keep cases on the pace adopted in Scheduling Orders and minimize the effects of any scheduling amendments warranted by the case's progress. If confirmed, I would continue this tradition but also look for ways to improve case management. For example, my experience has taught me that some cases, because of their complexity or breadth, warrant direct case management by the District Judge who will preside over the substantive disposition of the case. I would, if confirmed, work to identify such cases and play a more active role in them.

- 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: If I am confirmed, I would plan to emulate the most effective trial judges before whom I have practiced. I would plan, if confirmed, to conduct independent legal research to identify the governing legal principles that apply to each case, review the parties' submissions closely to understand their positions and arguments, and apply the governing legal principles to the evidence presented by the parties. As for the transitional challenges I would face, if confirmed, I am mindful that I do not have significant experience in federal criminal law. Thus, I recognize the need, if confirmed, to devote concerted effort to master this aspect of the federal trial court docket. In facing this challenge, I am comforted by the fact that my career has involved me in a broad array of civil cases and consistently required me to learn new areas of the law.

- 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 these questions on Friday, December 20. The next morning, I reviewed the questions, conducted appropriate research, and began drafting my answers. I shared my draft responses with the Office of Legal Policy in the Department of Justice, and I spoke with a representative of that office. I then revised my responses and authorized their submission to the Committee.

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

Response: They do.

Questions for Judicial Nominees
Senator Ted Cruz to Daniel D. Crabtree

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: If confirmed, I would approach judging by emulating the characteristics of the best trial judges I have appeared before in years of practice as a trial lawyer. Those characteristics include: impartiality; respect for and adherence to the governing legal principles; command of the rules of civil procedure and rules of evidence; respectful and civil treatment of jurors, litigants, and lawyers; coming to court prepared; and having the will to make decisions when, in the context of the rules of procedure, it is time to make them. I do not feel qualified to liken this this approach to that of any particular Chief Justice or Justice.

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, I would follow Supreme Court and Tenth Circuit precedent using this method of interpretation. I know, for instance, that in certain lead opinions the Supreme Court has used the original public meaning ascribed to terms and words used in the Constitution and its amendments as a method of interpretation. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court analyzed how certain words used in the Second Amendment had been used originally in a variety of legal sources and by those who participated in drafting the provision.

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 have been nominated to serve as a District Court Judge and consequently, if confirmed, it would not be proper for me to overrule 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: This statement in *Garcia* is part of precedent binding on all lower courts and, if confirmed, I would apply it faithfully (along with other pertinent decisions of the Supreme Court and the Tenth Circuit) in cases involving issues of state sovereign interests.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: To my knowledge, the Supreme Court has not held that non-economic activity necessarily falls outside the scope of the Commerce Clause. But I also understand that the Supreme Court has relied on the non-economic characteristic of the regulated conduct at issue to invalidate two Acts of Congress, concluding that the regulation at issue exceeded the power delegated by the Commerce Clause. *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). I am aware that at least one Justice has expressed the view that Congress may regulate non-economic conduct in certain circumstances. *Gonzales v. Raich*, 545 U.S. 1, 33 (2005) (Scalia, J., concurring). If I were confirmed, I would carefully apply Supreme Court and Tenth Circuit precedent to any issues arising under the Commerce Clause.

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

Response: In determining whether the President has acted within the scope of constitutional or statutory authority for executive orders or executive actions, the Supreme Court has established and applied an analytical framework. *Medellín v. Texas*, 552 U.S. 491 (2008). This "tripartite scheme" evaluates whether executive action stems from implied or express authority conferred by Congress, from the President's own independent powers, or is instead incompatible with the expressed or implied will of Congress. If I were confirmed and presented with an issue of this kind, I would apply Supreme Court and Tenth Circuit precedent to resolve the question.

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

Response: The Supreme Court has held that the due process clause protects fundamental rights and liberties which, objectively, are "deeply rooted in [our] Nation's history and tradition" and are "implicit in the concept of ordered liberty" so that liberty and justice would not exist "if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted).

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

Response: Under my understanding of current precedent, a classification warrants heightened scrutiny when it uses suspect classifications or burdens fundamental rights such as the right to vote. The Supreme Court has identified the reasons certain classifications warrant heightened scrutiny, *e.g.*, heightened scrutiny for classifications based on race, alienage, national origin, and sex but not for classifications based on age or intellectual disabilities. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441-47 (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 do not feel qualified to predict the governing state of the law on this question 15 years from now. If this statement were germane to a future case, its significance would be a subject for argument and analysis at that time. I would apply, if confirmed, the holding in *Grutter*, *Fisher v. Univ. of Texas*, 133 S. Ct. 2411 (2013), and any other Supreme Court or Tenth Circuit precedent that might bear on any question arising from a public school's decision to consider an applicant's race in the admissions process.