

**Senator Grassley  
Questions for the Record**

**Susan Paradise Baxter  
Nominee, United States District Judge for the Western District of Pennsylvania**

- 1. You have been a magistrate judge for over 20 years. In fact, 14 years ago, you became the first full-time magistrate judge in Erie, Pennsylvania, permitting you to preside over federal civil trials for their duration. If confirmed, you will become an Article III judge, and will enjoy life tenure. Please explain how your experience on the federal bench, including your transition from part-time to full-time magistrate judge, has shaped your view of the judicial philosophy required to be an Article III judge.**

Response: I have been steadfast in my judicial philosophy over the nearly twenty-one years I have been a magistrate judge: A judge should have complete respect for the law and every litigant and attorney before her, and apply the law precisely to the case at hand. My caseload has increased because of my acquiring full-time status and a substantial consent docket, but my judicial philosophy has not changed. If confirmed, the experience gained by handling nearly every type of federal case as both a part-time magistrate judge for six years and a full-time magistrate judge for fifteen years in accordance with this judicial philosophy will serve me well as I acquire the additional duties of a district judge.

- 2. You often oversee claims brought by prisoners against their correctional officers, sometimes alleging mistreatment or physical abuse. How do you view your role in resolving these disputes, and in what ways is your function different than in those civil matters not involving convicted criminals?**

Response: I handle prisoner civil rights cases and habeas corpus petitions in the same manner in which I handle all of my cases. I took an oath to do justice without respect to persons of different station, and I believe in that oath and adhere to it firmly. Every civil case brought by a prisoner is reviewed personally by me and often is accompanied by a telephonic hearing with the prisoner (if proceeding *pro se*), so that the prisoner may be heard promptly during pre-trial motion practice and discovery. If confirmed as a district judge, I will continue this practice with prisoner civil cases.

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

Response: The most important attribute of a judge is integrity. A judge should be honest and fair-handed in every person-to-person interaction and in the work produced. In my long tenure as a magistrate judge, I have treated every case, every litigant, every juror and every lawyer fairly and honestly. I have approached every case without a preconceived opinion and have strived to come to the correct result by an even-handed adherence to the law.

- 4. 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 be considerate and respectful to all persons coming before her. Her demeanor should be measured and respectful, and she should be unwavering in her focus to apply the law correctly in each case. I believe that I have demonstrated this temperament during my tenure as a magistrate judge.

- 5. 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 have issued thousands of opinions and recommendations in my twenty-one years as a magistrate judge. In all cases, I have applied the law of the United States Supreme Court and the Third Circuit Court of Appeals faithfully and to the best of my ability without consideration of any personal views. I will continue to apply precedent precisely without exception in all cases if confirmed as a district judge.

- 6. 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 a case with no controlling precedent, I follow the principles of statutory interpretation beginning with the actual words of the law to determine whether its plain language provides the answer to the controversy presented. If the language is ambiguous, I review the entire law to determine if the context of the provision at issue is explained by reviewing the whole of the legislation. I also review any decisions from other circuit courts or district courts for guidance, despite their non-precedential value. If none of these approaches provides instruction, I carefully review any legislative history in its entirety for guidance. This is the approach I have taken as a magistrate judge and would continue to take if confirmed as a district judge.

- 7. 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 am bound by the decisions of the United States Supreme Court and the Third Circuit Court of Appeals. I would apply the law as decided by these appellate courts without respect to any personal views of their decisions.

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

Response: Statutes are presumed to be constitutional, and a federal court should avoid reaching a constitutional question if there is another avenue upon which the case may be resolved. In the limited circumstances when Congress exceeds its authority in passing a law or when a law violates the United States Constitution, it is the duty of the federal court to hold that the law is unconstitutional.

**9. 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. It is a judge’s duty to apply only the United States Constitution, the laws of the United States and the precedent set forth by the United States Supreme Court and the appropriate Circuit Court of Appeals to the cases before her.

**10. 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 never issued a decision or recommendation in my twenty-one years on the bench that is other than grounded in precedent and the text of the law. This Committee may be assured that I will apply the law and precedent precisely in the same manner to the cases before me if confirmed as a district judge.

**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: I have demonstrated during my long tenure as a magistrate judge that I treat all persons coming before me with respect and courtesy and that I apply the law fairly without reference to any personal views. I will continue these practices if confirmed as a district judge.

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

Response: As a magistrate judge, I hold an initial conference to set discovery deadlines and to anticipate the course and strategy of the case. I decide all pre-trial motions and discovery issues promptly and I set firm scheduling dates. If confirmed as a district judge, I will continue to closely monitor my docket in the same manner, as well as utilize the magistrate judges to the full extent of their authority under 28 U.S.C. § 636.

**13. 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 believe judges play a key role in controlling the pace and conduct of litigation. If confirmed, I would follow the steps outlined above in answer to Question 12 to keep cases moving forward. I would also take advantage of all instruction received from the Federal Judicial Center, as well as the technological aides developed to keep cases current and costs down, while remaining focused on reaching the correct result under the law.

**14. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: I review the entire record, specifically the moving papers, the supporting and opposing briefs, and any documentary and testimonial evidence. I research the text of any statute at issue and the relevant case law, especially the case law relied upon by the parties, focusing on the precedent of the United States Supreme Court and the Third Circuit Court of Appeals. I take oral argument if any matter needs clarification, asking questions of counsel as appropriate. When I reach a decision, I promptly issue an opinion, either written or orally from the bench, which sets forth the facts, the controlling law and the reasons behind my ruling.

**15. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: Although I am unfamiliar with the context of the above-quoted statement, I believe that a judge must apply the law and precedent before her specifically to each case no matter her personal view of the facts or circumstances.

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

Response: On December 17, 2015, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally answered all of the questions provided. I then submitted my answers to the Office of Legal Policy, and they were finalized before submitting them to the Committee.

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

Response: Yes.

**Senator Flake  
Questions for the Record**

**Susan Paradise Baxter  
Nominee, United States District Judge for the Western District of Pennsylvania**

- 1. What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?**

Response: Statutory interpretation begins with the actual words of the statute and the effect given them by the United States Supreme Court and, in my case, the Third Circuit Court of Appeals. If the statute has not been interpreted previously by either court, and the text of the statute is ambiguous, reference to other circuit or district court interpretations may be made in conjunction with a review of the statute in its entirety to determine if its meaning may be understood by the words used by Congress in the whole of the legislation. If none of these approaches provides instruction, legislative history may be carefully reviewed in its entirety to assist the court in its decision. This is the approach I have taken as a magistrate judge and would continue to take if confirmed as a district judge.

- 2. What is the proper scope of the 10<sup>th</sup> Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: The Tenth Amendment provides that powers “not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The proper scope of the Tenth Amendment is as construed by the United States Supreme Court in *New York v. United States*, 505 U.S. 144 (1992) and *Printz v. United States*, 521 U.S. 898 (1997), which decisions reinforce that the federal government has only the powers enumerated under the United States Constitution. If I am confirmed as a district judge and this issue arises in a case before me, I will follow this and any other precedent set by the United States Supreme Court and the Third Circuit Court of Appeals to the case before me.

- 3. Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?**

Response: Only cases or controversies may be reviewed by the federal courts under the United States Constitution. To this end, courts are bound by Supreme Court precedent, which instructs that a plaintiff must satisfy both Constitutional standing and prudential standing requirements, as this latter requirement was refined and explained in *Lexmark International, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014). I have formed no opinion during my service as a magistrate judge as to whether the standing doctrine fosters or impedes the ability of a litigant to obtain relief. If confirmed as a district judge, I will continue to follow the precedent to determine whether there is a case or controversy before me, as required by the United States Constitution.

**Senator Tillis**  
**Questions for the Record**

**Susan Paradise Baxter**  
**Nominee, United States District Judge for the Western District of Pennsylvania**

- 1. One challenge you will face as a federal judge is managing a busy caseload. If confirmed, how will you balance competing priorities of judicial efficiency and due process to all litigants involved in the case?**

Response: As a United States Magistrate Judge for nearly twenty-one years, I understand the importance of efficiently and effectively resolving the cases before me. I have relied on the training I have received to use the electronic case management system to full effect; I take advantage of the resources offered by the Federal Judicial Center; I hold status conferences regularly to keep cases on track and costs down, often by video- or tele-conferencing, where appropriate; and I issue opinions and orders in a timely manner. I have been able to keep my docket current while still thoroughly reviewing each case in front of me according to the law.

- a. Will you give certain cases priority over others?**

Response: As required by law, motions for temporary restraining orders and preliminary injunctions are given priority in civil matters. The law also requires a speedy trial in criminal cases. Other than these requirements, and any other priority established by law, I will decide all cases promptly without prioritizing them on any basis.

- 2. What is a fundamental right?**

Response: A fundamental right is a right provided by the United States Constitution, as amended, and as interpreted by the United States Supreme Court.

- a. From where are these rights derived?**

Response: These rights derive mainly from the Bill of Rights and the Due Process Clause of the Fourteenth Amendment, as construed by the United States Supreme Court.

- 3. What role, if any, should societal pressure or popular opinion play in interpreting legislation or the United States Constitution?**

Response: None. Each case should be decided strictly on the law as applied to the facts of the case.

## **Questions for Judge Susan Paradise Baxter**

### **1. Under what circumstances can a judge declare a statute unconstitutional?**

Response: Statutes are presumed to be constitutional, and a federal court should avoid reaching a constitutional question if there is another avenue upon which the case may be resolved. In the limited circumstances when Congress exceeds its authority in passing a law or when a law violates the United States Constitution, it is the duty of the federal court to hold that the law is unconstitutional.

### **2. What do you consider “judicial activism,” and is it ever appropriate for a judge to be a “judicial activist?”**

Response: People define “judicial activism” differently, but it is my firm conviction that a judge should apply the law specifically to each case without regard to her own views or beliefs. If confirmed, I will decide cases without respect to any view other than the controlling law. If a “judicial activist” is a judge who does other than that, I believe that judge is acting inappropriately.