

**Senator Grassley, Chairman
Questions for the Record**

**Alfred Bennett,
Nominee, U.S. District Judge for the Southern District of Texas**

- 1. When you were running for state judge, you said the following: “I look forward to running a strong and winning campaign which will result in a new era of Democratic judges at the Harris County Courthouse.”**

a. In your view, what’s the difference between a Republican and Democratic judge?

Response: The above statement was made in the context of Texas’ partisan election of state court judges and my urging of voters to support my judicial candidacy. There is no difference between a Republican and Democratic judge on the bedrock principles of impartiality, observing precedent, and respect for all litigants and their legal counsel.

b. You’ve also said that you “love being a Democrat.” What assurances can you give future litigants who would come before you that you would hear each case fairly, regardless of the political views of any individual before you?

Response: The above statement was made in the context of Texas’ partisan election of state court judges and my urging of voters to support my judicial candidacy. As a state trial court judge, I have a six-year record demonstrating that I treat all litigants fairly, that I follow the rule of law, and that I do not make decisions based upon any personal views, mine or the litigant. If confirmed as a federal district court judge, I would continue to follow the rule of law, to obey precedent, to give each and every litigant the same respect and attention, and to treat them fairly regardless of political beliefs, their economic status, or their posture in the case.

- 2. A newspaper article described you as “pro-choice.” What are the legal restrictions on abortions that you would be bound by, as a judge?**

Response: The above description occurred during my campaign for a legislative position, not during my judicial races. I recognize that a judge has different obligations than a legislator, and my six-year record as a state trial court judge demonstrates that I follow the rule of law and that I do not make decisions based upon any personal views. The Supreme Court has outlined the legal restrictions that may be placed on abortions. *See Gonzales v. Carhart*, 550 U.S. 124 (2007), *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). If confirmed, I intend to faithfully follow these precedents as well as any applicable precedent from the Fifth Circuit.

- 3. According to your questionnaire, you have very little criminal law experience, both as an attorney and as a judge. Since you’ve been nominated, what steps have you taken to familiarize yourself with criminal law?**

Response: Since my nomination, I have been reviewing the Federal Rules of Criminal Procedure, the United States Sentencing Commission Guidelines Manual, Supreme Court cases on criminal procedure and law, the Manual on Recurring Problems in Criminal Trials, and other materials provided by the Administrative Office of the United States Courts. In addition, if confirmed, I intend to take continuing legal education classes in the area of federal criminal law and solicit the advice of judicial colleagues as needed.

4. What mistakes have you made as a state court judge that will be helpful to you as you transition to federal judge?

Response: As a state trial court judge, any “mistakes” that I made have been turned into learning opportunities. As I listed in my Senate Judicial Questionnaire, I have been reversed on some occasions by the Texas Court of Appeals. Each time, I have used it as an opportunity to better understand how appellate courts viewed the applicable precedents, and I have been committed to applying the appellate courts’ understanding of the law in subsequent cases. In addition, I have gained invaluable experience as I conducted complex trials, worked with juries, managed courtroom staff, worked with judicial colleagues, tended to administrative responsibilities, and engaged in personal time management. If confirmed, I believe these experiences and lessons will aid my transition to federal judge.

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

Response: I believe the most important attribute of a judge is a commitment to the rule of law. That means a judge must impartially consider the facts of each case, faithfully apply the law, and follow binding precedent. I believe I have this attribute and have embodied it my past six years on the bench.

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: A judge should be calm, objective, and an engaged listener. Most importantly, a judge should demonstrate respect: respect for the rule of law, respect for all litigants who come before the court, respect for all counsel, and respect for court staff. I believe I have all these attributes and have exemplified them in my six years on the bench, and if confirmed I will continue to meet this standard.

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: As a state trial court judge, I have faithfully followed all precedents of the Texas Supreme Court and the Texas appellate courts. If confirmed, I will faithfully follow the

precedents of the United States Supreme Court and the Fifth Circuit whether I agree with such precedents or not.

- 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: If confirmed and presented with a case of first impression, I would look first to the text of the statute or rule in question. If the language was clear and unambiguous, I would apply the plain meaning of the text. If the language was ambiguous, I would use canons of statutory interpretation to better discern the meaning of the text and I would also look to Supreme Court and Fifth Circuit opinions in which those courts interpreted similar or analogous language.

- 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: If confirmed, I would faithfully followed the precedents of the United States Supreme Court and controlling Fifth Circuit precedents without reservation and without any regard to any personal beliefs.

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

Response: Each statute enacted by Congress is presumed to be constitutional. The rules of statutory interpretation require that where a reasonable interpretation can be given to a statute to avoid declaring it unconstitutional, that interpretation should be employed. After applying these rules, a court should declare a federal statute unconstitutional only when Congress has exceeded its authority under the Constitution or the statute violates a provision of the Constitution.

- 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. I am not aware of any circumstance where it would be permissible for a federal judge to rely upon foreign law or the “views of the world community” to interpret the Constitution.

- 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: In my six years on a state trial court bench, I have demonstrated my commitment to precedent and the text of law and have never been motivated by political ideology. If confirmed, I pledge to do the same on the federal district court bench.

- 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: My record as a state trial court judge is the best evidence that I can offer that I treat all litigants fairly, that I follow the rule of law, and that I do not make decisions based upon any personal views. If confirmed as a federal district court judge, I would continue to follow the rule of law and precedent, and to treat all litigants who appear before me fairly.

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

Response: If confirmed, I plan to manage my caseload in accordance with the Federal Rules of Procedure and the practices and Local Rules of the Southern District of Texas, including but not limited to scheduling case management conferences shortly after matters are filed, appropriately utilizing magistrate judges, making use of technology, and ensuring that trials proceed expeditiously. I will remain actively engaged over the course of a matter to ensure steady progress toward resolution.

- 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. If confirmed, I would take the steps described directly above to control my docket. In addition, I would endeavor to issue prompt rulings, and require counsel appearing before me to adhere to the highest standards of civility and professionalism while representing their clients.

- 16. 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: First, I determine the issues properly before the court. Second, I make a fair and impartial evaluation of the facts, and then I apply the relevant law according to precedent. Finally, I endeavor to communicate my decision in a clear and concise manner.

- 17. 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: I believe cases should be decided on the law and facts of each case without regard to any personal beliefs or opinions of the presiding judge.

18. 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.

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

Response: I received these questions from the Office of Legal Policy at the Department of Justice on January 29, 2015. I reviewed the questions and personally prepared answers to them. I submitted my answers to the Office of Legal Policy and discussed the same with OLP staff, after which I finalized my responses. I then authorized the Office of Legal Policy to submit these responses on my behalf.

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

Response: Yes.

**Questions for Judicial Nominees
Senator Ted Cruz**

**Alfred Bennett,
Nominee, U.S. District Judge for the Southern District of Texas**

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: My judicial philosophy, over the past six years that I have served as a state trial court judge, has been characterized by my respect for the rule of law, my respect for all litigants, my respect for all counsel, and my respect for court staff. Furthermore, I have limited my decisions to the controversies properly before the court and followed applicable precedent.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

Response: If a judge obeys his or her oath of impartiality and follows binding precedent, he or she will avoid imparting his or her own personal views to legal decisions. If confirmed, I will honor my oath of office and be impartial in my decision-making as I have for the past six years as a state trial court judge.

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

Response: As a state trial court judge, I am not sufficiently familiar with Supreme Court decisions over the past sixty years to opine which, if any, were wrongly decided. As a state trial court judge, I have applied binding precedents from the Texas Supreme Court and appellate courts without considering whether I thought the precedents were correctly decided. If confirmed, I would be obligated to faithfully follow the precedents of the United States Supreme Court and the Fifth Circuit whether I agree with such precedents or not.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: While I admire all the sitting Supreme Court Justices for their willingness to engage in public service and their devotion to the rule of law, I am not sufficiently familiar with their individual judicial philosophies to determine which one I would emulate. If confirmed, I will strive to be a judge who is impartial and demonstrates respect for the rule of law, all litigants, legal counsel, and court staff.

5. 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, other)?

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), the Supreme Court considered how the meaning of the words in the Second Amendment were understood at the time it was ratified to reach their decision. If confirmed, I will follow *Heller* and other

Supreme Court and Fifth Circuit precedents that spell out appropriate methodologies to interpret the Constitution.

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

Response: None.

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

Response: Federal courts are courts of limited jurisdiction. It is not the place of a federal court to run the daily operations of prisons, hospitals, or schools. If confirmed, and presented with a matter involving prisons, hospitals, or schools, I would apply the binding precedents of the Supreme Court and the Fifth Circuit.

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

Response: The Constitution reflects our country's core and enduring principles. As such, it is immune from generational changes in public opinion (notwithstanding the rare constitutional amendment). Thus, when the Constitution is read in its plain and ordinary meaning at the time of its ratification its meaning is not adjusted for the temporal preferences of society. Yet, the Constitution's enduring principles have been applied to modern circumstances, such as technology and the Fourth Amendment. *See, e.g., United States v. Jones*, 132 S. Ct. 945, 949 (2012) (the use of a GPS tracking device on a private vehicle "would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted"). When proceeding in this manner, I do not foresee conflict with judicial restraint.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: As a state trial court judge, I am not sufficiently familiar with Supreme Court decisions from the past ten years to opine which would be my favorite. If confirmed, I will faithfully follow the precedents of the Supreme Court and the Fifth Circuit whether I agree with such precedents or not, as I have done with binding precedents from the Texas Supreme Court and appellate courts for the last six years.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: As a state trial court judge, I am not sufficiently familiar with Supreme Court decisions from the past ten years to opine which, if any, were the result of judicial activism. If confirmed, I will faithfully follow the precedents of the Supreme Court and the Fifth Circuit regardless of any personal opinions as I have done with binding precedents from the Texas Supreme Court and appellate courts for the last six years.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: Natural law, however defined, is not precedent. If confirmed, the only guideposts that I will use in interpreting the Constitution or statutes are the text of the provision or statute at issue and precedents from the Supreme Court and the Fifth Circuit.

Congressional Power

12. 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: If confirmed as a federal district court judge, I will be bound by all Supreme Court precedents (*Garcia* included) regardless of any personal opinions that I may have.

13. 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 “identified three broad categories of activity Congress may regulate under its commerce power.” *United States v. Morrison*, 529 U.S. 598, 608 (2000) (internal citations omitted). Those categories are: (i) the use of the channels of interstate commerce, (ii) the instrumentalities of interstate commerce, or persons or things in interstate commerce, and (iii) those activities having a substantial relation to interstate commerce. *Id.* at 609. The Supreme Court has further stated that Congress’s regulatory power may extend to “noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.” *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring). If confirmed, I will follow these and all other applicable precedents of the Supreme Court and the Fifth Circuit.

14. What limits, if any, does the Constitution place on Congress’s ability to condition the receipt and use by states of federal funds?

Response: The Supreme Court has “recognized limits on Congress’s power under the Spending Clause to secure state compliance with federal objectives.” *See NFIB v. Sebelius*, 132 S. Ct. 2566, 2602 (2012). The Supreme Court has further stated that Congress’s Spending Clause power should not “undermine the status of the States as independent sovereigns in our federal system.” *Id.* If confirmed, and faced with a matter on this topic, I would follow all applicable precedents of the Supreme Court and the Fifth Circuit.

15. Is Chief Justice Roberts’ decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: In the *NFIB v. Sebelius* opinion, five justices indicated that the Commerce Clause did not authorize Congress’s action in passing the Patient Protection and Affordable Care Act. There has since been considerable discussion whether this part of Justice Roberts’ decision is binding precedent or dictum. *See, e.g., Liberty University, Inc. v. Lew*, 733 F.3d 72, 92 (4th Cir. 2013) (“Although ‘[t]here has been considerable debate about whether the statements [in *NFIB*] about the Commerce Clause are dicta or binding precedent,’ these five justices agreed that the Commerce Clause does not grant Congress the authority to ‘compel’ or ‘mandate’ an individual to enter commerce by purchasing a good or service.”). The Fourth Circuit expressed “no opinion as to whether the limitation on the commerce power

announced by the five justices in *NFIB* constitute[d] a holding of the Court.” *Id.* at 94 n.7. If confirmed, and faced with a matter on this topic, I would follow all applicable precedents of the Supreme Court and the Fifth Circuit.

Presidential Power

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

Response: The President only has those powers provided to him or her under the Constitution or an act of Congress. *Medellin v. Texas*, 552 U.S. 491, 524 (2008). If confirmed, I would follow *Medellin* and all other applicable precedents of the Supreme Court and the Fifth Circuit.

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: The President only has those powers provided to him or her under the Constitution or an act of Congress. *Medellin v. Texas*, 552 U.S. 491, 524 (2008). If confirmed, I will follow *Medellin* and all other applicable precedents of the Supreme Court and the Fifth Circuit.

Individual Rights

18. When do you believe a right is “fundamental” for purposes of the substantive due process doctrine?

Response: The Supreme Court has stated that a right is “fundamental” for due process analysis when it 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 they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations & quotation marks omitted). If confirmed, and faced with a question involving “fundamental rights”, I will follow *Washington* and all other applicable precedents of the Supreme Court and the Fifth Circuit.

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

Response: The Supreme Court has held that classifications based upon race, alienage, national origin, gender, and illegitimacy, as well as classifications which burden a fundamental right, are subject to heightened scrutiny under the Equal Protection Clause. *See City of Cleburne, Tex. v. Cleburne Living, Ctr.*, 473 U.S. 432, 440 (1985). If confirmed, and faced with an Equal Protection question I will follow *Cleburne* and all other applicable precedents of the Supreme Court and the Fifth Circuit.

20. 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: The Supreme Court indicated that race-conscious admissions policies must be limited in time, and have a termination point. *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003).

I have no expectation about the specific termination point appropriate for any particular admissions policy. If confirmed, I will follow the *Grutter* precedent, as well as any other Supreme Court and Fifth Circuit precedents addressing the constitutionality of admissions policies.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: The Supreme Court has applied strict scrutiny in cases involving classifications such as race. *See Fisher v. University of Texas at Austin*, 133 S. Ct. 2411, 2419 (2013) (“racial classifications are constitutional only if they are narrowly tailored to further compelling governmental interests.”) (internal quotation marks omitted). If confirmed, I would follow *Fisher* and all other applicable Supreme Court and Fifth Circuit precedent in deciding cases involving this issue.

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: The Supreme Court has stated that the Second Amendment protects an individual’s right to possess a firearm for traditionally lawful purposes, including self-defense at home. *See McDonald v. Chicago*, 561 U.S. 3025 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008). *See also National Rifle Ass’n of America, Inc. v. McCraw*, 719 F.3d 338, 346 (5th Cir. 2013) (“the Second Amendment ‘guarantees[s] the individual right to possess and carry weapons in case of confrontation.’”) (quoting *Heller*). If confirmed, and faced with a Second Amendment question, I will follow these and all other applicable precedents of the Supreme Court and the Fifth Circuit.