

**Senator Grassley
Questions for the Record**

**Roseann Ketchmark,
Nominee, U.S. District Judge for the Western District of Missouri**

- 1. What role, if any, do you believe a federal judge should play in balancing seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.**

Response: A federal judge should properly calculate the sentencing guideline range under the Federal Sentencing Guidelines Manual, including whether any departures from the guidelines are warranted or whether a variance from the correctly calculated sentencing guideline range is warranted under the authority of 18 U.S.C. Section 3553. Under Section 3553(a)(2) a sentencing judge should consider “the need for the sentence imposed . . . to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; and to provide the defendant with needed educational or vocational training.”

- 2. What improvements, if any, do you believe need to be made to our criminal justice system?**

Response: While I am reluctant to comment on revisions to the criminal justice system since the legislature is responsible for formulating criminal justice policies, I have been an advocate of Children’s Advocacy Centers in the Kansas City area for over 20 years. These centers play an important role in conducting non-leading, age appropriate interviews of children suspected of being physically or sexually abused, or children who have witnessed serious crimes. I believe our criminal justice system could be improved by ensuring that rural communities throughout the United States are aware of, and have better access to services such as those provided by Children’s Advocacy Centers.

- 3. How much discretion do you think is appropriate for judges to have during sentencing?**

Response: Although the Sentencing Guidelines are now discretionary rather than mandatory, they remain a very important tool to provide uniformity, stability and predictability in our criminal justice system. Sentencing judges have discretion to vary upwards or downwards from the appropriately determined sentencing guideline range if such variance is warranted under the authority of 18 U.S.C. Section 3553(a). If confirmed as a district court judge, I would give substantial deference to the Sentencing Guidelines and follow the law and binding precedent of the Supreme Court and the Eighth Circuit regarding the application of judicial discretion in sentencing.

- 4. The majority of your career has been spent handling criminal matters. How have you been preparing yourself to be able to handle complex civil matter, if you are confirmed?**

Response: As First Assistant United States Attorney for six years, I supervised the Civil Division Chief in the United States Attorney's Office and was regularly briefed regarding important and complex civil matters within our office. Since my nomination I have reviewed materials which I received from the Federal Judicial Center regarding civil practice, including "Manual for Complex Litigation," "Managing Discovery of Electronic Information," "The Elements of Case Management: a Pocket Guide for Judges," and "Civil Litigation Management Manual." I am also reviewing slip opinions issued by the Eighth Circuit Court of Appeals in civil cases.

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

Response: The most important attribute of a judge is to fairly and impartially apply the law to the facts. I believe I have this attribute, and if confirmed as a district court judge, I would set aside any personal beliefs and apply the law and binding precedent to the relevant facts of each case in a fair and unbiased manner.

- 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 is to be respectful and courteous to all parties, and to listen patiently and with an open mind to the statements and arguments of the litigants. If I am fortunate enough to be confirmed, I am confident that I would meet this standard of judicial temperament.

- 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: If confirmed as district court judge, I would set aside any personal beliefs and views I may have, and will faithfully follow the law and binding precedent of the Supreme Court and the Eighth Circuit in all matters presented to me.

- 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 to the text of the statute, regulation, or rule at issue. If the language were clear, I would apply the plain meaning of the text. If the language were ambiguous, I would look to analogous provisions of law and to applicable rules of construction, such as accepted canons of statutory construction. I would also look to the Supreme Court and Eighth Circuit for guidance on relevant interpretive methodologies.

- 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 as a district court judge, I would set aside any personal views I might have, and I will faithfully follow binding precedent regardless of whether or not I agree with it.

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

Response: Statutes enacted by Congress are presumed to be constitutional. Under the doctrine of constitutional avoidance, a district court should avoid declaring a statute unconstitutional if there is a plausible alternative interpretation. A federal court should declare a statute unconstitutional only in the rare circumstance when Congress has clearly exceeded its authority under the Constitution in enacting the statute or when the statute violates the Constitution and only if such ruling is necessary to the disposition of a case. If confirmed as a district judge, I would apply the standards established by the Supreme Court and the Eighth Circuit Court of Appeals in considering the constitutionality of a statute.

- 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: It is not proper for judges to rely on foreign law or the views of the “world community” in determining the meaning of the Constitution. Federal judges should rely on the law and binding precedent to determine the meaning of 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: I assure the Committee that if I am confirmed as a district judge my decisions would be grounded in precedent and the text of the law rather than any underlying political ideology or motivation. I have performed my responsibilities of enforcing criminal law as a prosecutor for the past 24 years without any underlying political ideology or motivation.

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: If confirmed as a district court judge, I would be devoted to treating all litigants fairly. I would be committed to keeping an open mind, which necessarily entails setting aside any personal views and beliefs I may have on an issue, and carefully considering and analyzing the relevant laws and facts presented in each case.

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

Response: If confirmed as a district court judge, I would actively manage my caseload by utilizing early scheduling conferences in which discovery, motion practice, and unique case issues are discussed and realistic deadlines are set. I would continue to make myself available to the parties to resolve pretrial disputes, and utilize status conferences to ensure cases are progressing efficiently towards resolution. I would also seek advice and counsel from judicial colleagues to develop other caseload management tools.

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: I believe that judges should have a role in controlling the pace and conduct of litigation. If confirmed as a district court judge, I would utilize the methods described in my previous answer to effectively move cases towards final disposition.

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: Although I have not served as a judge, if I am confirmed as a district court judge, I would reach decisions in cases that come before me by carefully analyzing and considering the legal issues presented; by listening with an open mind to the briefs, presentations and arguments of the litigants; by applying the law and binding precedent to the relevant facts; and ruling promptly.

17. Do you believe there is a right to privacy in the U.S. Constitution?

Response: Although the United States Constitution does not contain an express right to privacy, various provisions have been held by the United States Supreme Court to protect some rights of privacy. For example, the Supreme Court has held that the First Amendment protects rights of privacy in association. *See, e.g., NAACP v. Alabama*, 357 U.S. 449, 462 (1958) (“This Court has recognized the vital relationship between freedom to associate and privacy in one’s associations.”). The Supreme Court likewise has held that the Fourth Amendment protects privacy in the home. *See, e.g., Kyllo v. United States*, 533 U.S. 27, 34-40 (2001) (holding that thermal imaging of the interior of a home violates the prototypical privacy interest protected by the Fourth Amendment); *Missouri v. McNeely*,

133 S. Ct. 1552, 1558 (2013) (internal quotation marks omitted) (holding that search involving “a compelled physical intrusion beneath [suspect’s] skin and into his veins to obtain a sample of his blood for use as evidence” constitutes “an invasion of bodily integrity [which] implicates an individual’s most personal and deep-rooted expectations of privacy”). The Supreme Court also has held that the “liberty” interest protected by the Due Process Clause found in the Fifth Amendment and Fourteenth Amendment includes the right “to marital privacy, to use contraception, to bodily integrity, and to abortion.” *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (identifying the liberty interests in the Due Process Clause, including the right to privacy).

a. Where is it located?

Response: Please see Response to Question 17 above.

b. From what does it derive?

Response: Please see Response to Question 17 above.

c. What is your understanding, in general terms, of the contours of that right?

Response: Please see Response to Question 17 above.

18. 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 am not familiar with the context of this statement. A federal district court judge should decide cases by following the law and binding precedent, and by fairly and impartially applying it to the relevant facts of each case.

19. 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.

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

Response: On March 18, 2015, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions and the cases referenced in the questions, and I then drafted my responses. After some discussions with an attorney from the Department of Justice, I finalized my responses and requested that the Department of Justice submit them on my behalf to the Senate Judiciary Committee.

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

Response: Yes.

Senate Committee on the Judiciary
Questions for the Record from Senator Vitter
“Nominations”

Wednesday, March 11, 2015

Roseann A. Ketchmark, to be a United States District Judge for the Western District of Missouri

- 1. What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

Response: In *National Labor Relations Board v. Noel Canning*, 573 U.S. ____ (2014), the Supreme Court held that for purposes of the Recess Appointments Clause, the Senate is in session when it says it is, provided that, under its own rules, it retains the capacity to transact Senate business. Therefore, the Senate determines when the Senate is in recess, provided the recess is of sufficient length. The Court held that the Recess Appointments Clause permits recess appointments during intra-session recesses that last 10 days or longer, as well as appointments to fill vacancies that existed prior to the recess. If confirmed as a district court judge, I would faithfully apply this binding precedent of the United States Supreme Court.

- 2. In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women’s health and, as a result, all abortion clinics in the state are shut down?**

Response: In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court imposed a new standard to determine the validity of laws restricting abortions. The new standard asks whether a state abortion regulation has the purpose or effect of imposing an "undue burden," which is defined as a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Id.* at 877. Under the “undue burden” standard, the Court invalidated the spousal notification requirement of the Pennsylvania Abortion Control Act of 1982, but upheld other provisions of the Act. Because the issue in question is being litigated in various federal courts, I do not believe it would be appropriate for me to address the issue in advance of a case that could come before me as a judge if I am confirmed. If confirmed as a district court judge, I would faithfully follow the binding precedent of the Supreme Court and the Eighth Circuit.

3. The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?

Response: The Supreme Court opinion in *Roe v. Wade*, 410 U.S. 113 (1973), is over 40 years old and has not been overturned. The Supreme Court has reaffirmed the core holding that “[r]egardless of whether exceptions are made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.” *Planned Parenthood v. Casey*, 505 U.S. 833, 879 (1992). In addition to *Roe v. Wade* and *Planned Parenthood v. Casey*, the Supreme Court holding in *Gonzales v. Carhart*, 550 U.S. 124 (2007), is binding precedent as well. These precedents of the Supreme Court are entitled to respect under the doctrine of *stare decisis*. If confirmed as a district court judge, I would faithfully follow the binding precedent of the Supreme Court and the Eighth Circuit.

4. Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?

Response: The Minnesota Supreme Court's holding in *Baker v. Nelson*, 291 Minn. 310, 191 N.W.2d 185 (1971), held that a state law limiting marriage to persons of the opposite sex did not violate the United States Constitution. When Baker appealed the U.S. Supreme Court dismissed the appeal "for want of a substantial federal question." *Baker v. Nelson*, 409 U.S. 810 (1972). In *United States v. Windsor*, 133 S. Ct. 2675 (2013), the U.S. Supreme Court held the federal Defense of Marriage Act to be unconstitutional but recognized the “virtually exclusive province of the States” to define and regulate marriage subject to Congress’ authority “in enacting discrete statutes [to] make determinations that bear on martial rights and privileges” and “subject to constitutional guarantees.” *Id.* at 2690-92 (internal quotation marks omitted). More recently the Supreme Court has granted certiorari in *Obergefell v. Hodges*, regarding whether the Constitution requires States to issue marriage licenses to same sex couples. The Supreme Court's resolution of that issue as well as all other issues will be binding on all lower court judges. If confirmed as a district court judge, I would faithfully follow the binding precedent of the Supreme Court and the Eighth Circuit Court of Appeals.

5. What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?

Response: My philosophy on judicial precedent is that federal district court judges are sworn to follow the binding precedent of the Supreme Court and their corresponding Circuit Court of Appeals whether or not they agree with it. My personal views on any issues will play no role in my decision.

- 6. How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?**

Response: In *District of Columbia v. Heller*, 554 U.S. 571, (2008), the Supreme Court held that the Second Amendment protects the individual right to keep and bear arms for self-defense, and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), made clear that the Second Amendment was fully binding upon States. Because the precise scope of the individual, fundamental right to keep and bear arms as guaranteed by the Second Amendment is a matter currently in litigation, I do not believe it would be appropriate for me to address the issue in advance of a case that could come before me as a judge if I am confirmed. If confirmed as a district court judge, I would faithfully follow the precedent of the Supreme Court and the Eighth Circuit regarding Second Amendment issues.

- 7. Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?**

Response: Because the question calls for my opinion regarding a pending legal issue, I do not believe it would be appropriate for me to address the issue in advance of a case that could come before me as a judge if I am confirmed. I assure the Committee that if confirmed as a district court judge, I would adhere to the precedent of the Supreme Court and the Eighth Circuit regarding all issues of capital punishment.

**Questions for Judicial Nominees
Senator Ted Cruz**

**Responses of Roseann Ketchmark
Nominee, U. S. District Judge for the Western District of Missouri**

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: My judicial philosophy is to fairly and impartially apply the law to the relevant facts. If I am fortunate enough to be confirmed, I would listen with an open mind to all the arguments presented by the litigants.

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: A responsible judge should follow the guidance and methodologies outlined in binding precedent of the Supreme Court of the United States when interpreting constitutional provisions without regard to any personal beliefs, values or opinions.

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: I have not engaged in such an in-depth process involving a Supreme Court ruling from the Warren Court, Burger Court or Rehnquist Court to lead me to conclude a case was wrongly decided. If confirmed as a district court judge, I would faithfully follow all binding precedent of the United States Supreme Court and the Eighth Circuit regardless of my personal views.

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

Response: I am not sufficiently familiar with the individual characteristics of the sitting Supreme Court Justices to select one particular justice that I most want to emulate. I admire and would want to emulate judges who are devoted to carefully considering and studying the legal issues presented, and who fairly and efficiently apply the law to the facts.

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: The Supreme Court looked to original public meaning when interpreting a constitutional provision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I would faithfully follow the Supreme Court's precedent in applying originalist methodologies to the interpretation of constitutional provisions, including looking to the Constitution's text and original sources such as the Federalist Papers, consistent with the guidance in cases such as *Heller*.

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: Foreign courts and international tribunals should not play any role in the interpretation of the United States Constitution and laws.

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

Response: Because federal courts are courts of limited jurisdiction, the role of the federal courts in administering institutions such as prisons, hospitals, and schools is limited by both the Constitution of the United States and federal law.

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 theory of a living Constitution is that the Constitution evolves and changes over time, without being formally amended. A potential problem with a judge employing the theory of a living Constitution is the possibility of injecting personal beliefs in determining how the Constitution should evolve. The doctrine of judicial restraint is a type of judicial interpretation that emphasizes the limited nature of the court's power, and stresses the need to only resolve the issues before the court. A judge is less likely to inject personal beliefs when practicing judicial restraint.

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

Response: I do not have a favorite Supreme Court decision. I would apply them all as binding precedent.

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

Response: I am not familiar enough with the full record of any Supreme Court case that I would feel comfortable characterizing one as an example of judicial activism.

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: I define natural law as natural rules of moral behavior. I do not believe a judge should use natural law in interpreting the Constitution or statutes, but rather should rely on binding precedent.

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: The Supreme Court’s decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) is binding precedent in this area. If confirmed as a district court judge, I am committed to following the holding in *Garcia* and all other binding precedent of the United States Supreme Court and the Eighth Circuit.

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 power of Congress’ Commerce Clause extends to 1) the use of the channels of interstate commerce, 2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, and 3) those activities having a substantial relation to interstate commerce. See *United States v. Morrison*, 529 U.S. 598, 608 (2002). Moreover, in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), (Scalia, J., concurring) (citation omitted), Justice Scalia relied on the Necessary and Proper Clause in conjunction with the Commerce Clause to conclude that Congress’ regulatory power may extend to “noneconomic local activity if the regulation is a necessary part of a more general regulation of interstate commerce.” If confirmed as a district court judge, I would follow the binding precedent of the United States Supreme Court and the Eighth Circuit in determining issues under the Commerce Clause and the Necessary and Proper Clause.

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’ power under the Spending Clause to secure state compliance with federal objectives.” See *NFIB v. Sebelius*, 132 S. Ct. 2566, 2602 (2012). The Court held Congress’ power should not extend to the point that it undermines the ability of the States to maintain their independent sovereignty. *Id.* If confirmed as a district court judge, I would follow the ruling in *NFIB v. Sebelius* and all other controlling Supreme Court precedent.

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: It is a matter of dispute in the federal appellate courts whether Chief Justice Roberts’ decision on the Commerce Clause and Necessary and Proper Clause is binding precedent because of the fragmented nature of the opinion. The Supreme Court provided guidance on how to view holdings of fragmented opinions in *Marks v. United States*, 430 U.S. 188 (1977). Under *Marks*, “[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as the position taken by those Members who concurred in the judgments on the narrowest grounds.” *Id.* at 193.

Presidential Power

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

Response: The ability of the President to issue executive orders or executive actions must be authorized by an act of Congress or from the Constitution. If confirmed, I would apply all Supreme Court and Eighth Circuit precedent in evaluating the legality of executive orders and executive actions.

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

Response: All Presidential power must stem from either an act of Congress or from the Constitution itself. If confirmed, I would apply all Supreme Court and Eighth Circuit precedent in evaluating Presidential powers.

Individual Rights

18. 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 if it is “deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and internal quotation marks omitted). If confirmed, I would apply all Supreme Court and Eighth Circuit precedent in evaluating questions of fundamental rights.

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

Response: The Supreme Court has held that a classification is subject to heightened scrutiny under the Equal Protection Clause if the classification is seldom relevant “to the achievement of any legitimate state interest” or if it is not relevant to the “ability to perform or contribute to society.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985) (internal quotation marks omitted). If confirmed, I would follow Supreme Court and Eighth Circuit precedent regarding the application of heightened scrutiny under the Equal Protection Clause.

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: I have no expectations regarding whether racial preferences will no longer be necessary in public higher education in the future. If confirmed, I would apply all Supreme Court and Eighth Circuit precedent regarding issues of racial preference.

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 held that under the Equal Protection Clause, “strict scrutiny must be applied to any . . . program using racial categories or classifications.” *Fisher v. University of Austin*, 133 S.Ct. 2411, 2419 (2013). Under “strict scrutiny” the classification must be “narrowly tailored to further compelling government interests.” *Id.* If confirmed, I would apply this and all other Supreme Court and Eighth Circuit precedent in evaluating whether the Equal Protection Clause tolerates public policies that apportion benefits or assistance on the basis of race.

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 held in *District of Columbia v Heller*, 554 U.S. 570, 592 (2008) that the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation,” in self-defense in the home. The Supreme Court has yet to rule explicitly whether or not the guarantees of the Second Amendment extend to the right to keep and bear arms for self-defense in public. The scope of the right beyond the home, and the standards for determining whether and how the right can be regulated, are not uniform among the federal appellate courts. If confirmed as a district judge, I would faithfully apply all Supreme Court and Eighth Circuit precedent in evaluating Second Amendment issues.