

**Responses of Sharon L. Gleason
Nominee to be United States District Judge for the District of Alaska
to the Written Questions of Senator Charles Grassley**

- 1. At your hearing, I asked you about a report you appeared to have authored entitled, “A Review of Alaska’s Statutes for Sex Discrimination.” You responded, in part, “Frankly, sitting here today, I do not recall what portions of the report I personally authored and what were the work of volunteer attorneys. So it was more of a synthesis role that I played at that point in time.” However, in response to question 12(b) of your Senate Questionnaire, you wrote: “In 1985, I wrote a report for the Alaska Women’s Commission, which was entitled, “A Review of the Alaska Statutes for Sex Discrimination.” Given the answer you supplied in the Senate Questionnaire, I was somewhat perplexed by your statement at the hearing.**
 - a. Please explain in detail the extent of your authorship of the report and your review or editing of portions you did not write.**

Response: I prepared the report in 1985 for the Alaska Women’s Commission as part of my work as an associate attorney at Reese, Rice and Volland, P.C. My independent recollection of the project is limited. Therefore, to respond to this question, I referred back to the report. The extent of my authorship of the report is explained on pages three and four of that report. Page three explains that the Alaska Women’s Commission decided to conduct a review of Alaska’s statutes for sex discrimination. It adds, “a plan was adopted that would request the assistance of the Alaska Bar Association and state government agencies to perform the initial review of the statutes.” Page four of the report details my role as the legal coordinator for the project as follows:

As the agencies and volunteer lawyers completed their reviews, the Women’s Commission hired an attorney to serve as the legal coordinator for the next phase of the project. Under the direction of the project director [a Commission staff person], the legal coordinator consolidated all of the information from the agencies and volunteer attorneys. In addition, the coordinator independently reviewed the Alaska Statutes in an effort to ensure the identification of as many sexually discriminatory statutes as possible. ...

The legal coordinator then organized these statutes by subject matter. Each statute identified was analyzed, with Alaska case law, statutory history, and legal periodicals and similar statutes in other states consulted for reference. The draft report was then prepared and distributed to the Women’s Commission, state departments, volunteer members of the judiciary and volunteer lawyers for comment.

Comments on the draft report were consolidated and then analyzed by the legal coordinator and the project director. . . . A synopsis of the comments and suggested actions were presented to the Alaska Women's Commission for final action. These comments were integrated into the final report, which was presented to the Commission in May 1985.

In short, the Alaska Women's Commission was a client of the law firm for which I worked in 1985. In the course and scope of my work with the firm, I acted as the legal coordinator of the project described above. In that role, I prepared the report under the direction of the project director using the input I received from the volunteer attorneys and state agencies about the statutes, as well as the results of my own statutory review and legal analysis. I am unable at this time to identify which portions of the report were derived solely from my own review and analysis, and which portions of the report were derived from the input I had received from other attorneys and state agencies, as well as from the project director and the Commission itself.

b. Please explain the inconsistency between the answer you provided at your hearing and the response in your Senate Questionnaire.

Response: As I indicated above and at the hearing, I have limited independent recollection of this project. When I prepared my responses to the Senate Judiciary Questionnaire earlier this year, I had not then thoroughly reviewed that portion of the report that I have cited above that contains the description of my role in the project. Instead, in preparing my response to the Senate Questionnaire, I relied on the report's cover page, which indicates that it was "prepared by" me as the legal coordinator that was hired by the Alaska Women's Commission. In addition, the copy of the report that I supplied to the Senate Judiciary Committee was obtained from the Alaska State Court Law Library. Its on-line catalog indicates that the report is "by Gleason, Sharon L., Alaska Women's Commission," and I relied on that information in preparing my response. Prior to my hearing, I carefully read pages three and four of the report, as cited above, which clarified the extent of my role in the project.

- 2. At your hearing, I asked you about a statement from your report, which states: "The Constitution guarantee of equal rights and protections and the right to privacy present a strong argument in support of the decriminalization of prostitution." I asked whether you support the decriminalization or legalization of prostitution today. You did not answer, but stated, "I really have not given any reflection on that. . . . it is essentially a legislative prerogative, as I would see it, and if there were a law one way or the other, it would be my obligation to enforce that law." Please take whatever time necessary to reflect on the issue and answer the following question: Do you support the decriminalization or legalization of prostitution?**

Response: I do not have an opinion as to whether or not prostitution should be legalized. Under current Alaska law, prostitution is a crime. Pursuant to my oath of office as a judicial officer, I am fully committed to the enforcement of all of the duly-enacted laws of the United States, including that law.

That said, I would like to clarify the recommendations of the report. The report notes a discriminatory impact on women under Alaska law because in 1985 prostitution was a crime, but the act of patronizing a prostitute was not a crime. It then states, “[t]wo different approaches would remedy this discriminatory impact. The first is to decriminalize prostitution. The second is to criminalize on an equal basis with prostitution the customer’s act of offering money to a prostitute.” [Report at 44]

- 3. At your hearing, I asked about the portion of your report that concluded that Alaska’s restrictions on abortion were unconstitutional. I asked whether, in your view, a State may impose any restrictions on abortions, and if so, what restrictions might be permissible. You did not answer. Please take whatever time necessary, and provide a response that directly answers the question.**

Response: The United States Supreme Court has articulated several situations in which a State may impose restrictions on abortions. For example, in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), a plurality of the Supreme Court upheld restrictions related to informed consent, a 24-hour waiting period, parental consent for minors to obtain abortions, and recordkeeping and reporting. In *Mazurek v. Armstrong*, 520 U.S. 968 (1997), the Court held that a State could restrict the performance of abortions to licensed physicians only. And in *Gonzales v. Carhart*, 550 U.S. 124 (2007), the Court upheld the Partial-Birth Abortion Ban Act of 2003, which proscribed a particular method of ending fetal life in the later stages of pregnancy. The Supreme Court has also “long upheld state parental involvement statutes” with respect to minors seeking abortions. *Ayotte v. Planned Parenthood of Northern New England*, 546 U.S. 320, 327 (2006). If confirmed to be a District Court judge, I would faithfully apply this (and all other) controlling precedent and give it full force and effect.

- 4. 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 the ability to ascertain and apply the applicable legal precedent to the facts that are at issue before the court. As demonstrated by the high scores I have received from lawyers, peace officers and other court participants in surveys for judicial retention elections, I believe I possess this attribute.

- 5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: In my view, a judge should be patient, dignified and respectful at all times to each of the participants in court proceedings. I believe I possess each of these elements.

- 6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

- 7. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded 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 the issue involved one of statutory interpretation, I would look to the text of the statute for its plain and ordinary meaning. In the event of some ambiguity, I would look first to the rulings of the United States Supreme Court and the Circuit in which I would sit in an effort to find case law that was analogous to the issue before me. If there was no precedent to guide me from those courts, I would look to other Circuit Courts in an effort to find case law that could be helpful in deciding the case.

- 8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: If confirmed as a District Court judge, I would always apply the precedent of the Supreme Court and the Circuit in which I would sit.

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

Response: A federal court should declare a statute enacted by Congress unconstitutional when persuaded by controlling precedent or analogous authority of the United States Supreme Court or Circuit Court that the statute is inconsistent with a provision in the Constitution. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

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

Response: I have had considerable experience managing my caseload at the state court level, and, if confirmed as a federal court judge, I intend to use the case management skills that I have developed over the past ten years. In particular, I would undertake regular reviews of my pending case lists and pending motions to be certain all cases were receiving the attention they needed, and I would use such tools as pretrial scheduling orders, status conferences, and settlement conferences as warranted in an effort to move each case forward to a prompt and fair resolution.

11. 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: In my view, judges have a role in controlling the pace and conduct of litigation. Foremost, I would strive to rule on all motions in a timely manner. I would also plan to continue many of the case management practices that have worked well for me as a trial court judge. This includes keeping records of each pending motion and open case and regularly reviewing those records to ensure that each case is receiving the attention that it requires. I have also found that regular status conferences with counsel are helpful in particularly complex or contentious litigation, and I would plan to continue that practice as warranted.

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

Response: I received the questions on July 20, 2011, and reviewed them carefully. I referred to the "Review of the Alaska Statutes for Sex Discrimination" from 1985 to respond to Questions 1 and 2. I prepared my responses, then discussed those responses with an official at the Department of Justice, Office of Legal Policy. Thereafter, I finalized my responses and authorized their transmittal to the Committee.

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

Response: Yes.

Senator Charles Grassley
Follow-up Questions for the Record
Judge Sharon Gleason, U.S. District Judge for the District of Alaska

1. **At your hearing, I asked you about a statement from your report which states: “The Constitution guarantee of equal rights and protections and the right to privacy present a strong argument in support of the decriminalization of prostitution.” I asked whether you support the decriminalization or legalization of prostitution today. You did not answer, but stated, “I really have not given any reflection on that. . . . It is essentially a legislative prerogative, as I would see it, and if there were a law one way or the other, it would be my obligation to enforce that law.”**

In my written questions, I asked you to “please take whatever time necessary to reflect on the issue and answer the following question: Do you support the decriminalization or legalization of prostitution?” Again, you refused to take the opportunity to reflect on and answer the question, but instead stated: “I do not have an opinion as to whether or not prostitution should be legalized.”

Your unwillingness to provide a straightforward answer concerns me for a couple reasons. First and perhaps most importantly, the integrity of the confirmation process requires nominees to answer our questions. Second, your unwillingness to answer this question is particularly curious, given that when I asked whether you still believed veterans’ benefits work to the detriment of women as a class, you responded without hesitation, “No, I do not.”

With this in mind, please take whatever time necessary and answer the following two questions:

- a. **Do you support the decriminalization or legalization of prostitution?**

Response: I acknowledge the Senate’s important constitutional role in the judicial confirmation process, and very much respect the integrity of that process. I regret that my earlier answer may seem to indicate otherwise. As a judicial officer, I have seldom expressed my personal opinions on policy issues that fall within the purview of the legislature. On this specific issue, I did not have an opinion. However, in light of the opinions that were expressed in the 1985 report and after receiving these follow-up questions, I have undertaken the research and reflection necessary to formulate my personal opinion. Based on that undertaking, I have concluded that I do not support the decriminalization or legalization of prostitution. Of course, if confirmed to the federal District Court, with respect to this issue, veterans’ benefits, and all other issues that might come before me, I would strive to always faithfully and impartially follow the precedents of the United States

Supreme Court and the Circuit in which I would sit, regardless of my personal views.

b. Do you stand by the report's recommendations regarding prostitution?

Response: No.