

**Senator Chuck Grassley  
Questions for the Record**

**Responses by M. Hannah Lauck,  
Nominee, U.S. District Judge for the Eastern District of Virginia**

- 1. You were part of a judges panel on March 24, 2009. During the panel, one of the presenters said that all judges have biases and stereotypes they bring to the courtroom and that the judge needs to recognize them, set them aside and not let them cloud their views. And that if judges don't admit that they have biases and stereotypes, they're not telling the truth.**

- a. Do you agree with this assertion?**

Response: I cannot speak for other judges, but I feel that I do not bring any bias or stereotype to the courtroom. I have followed the rule of law in a fair and impartial manner. In my nearly nine years as a magistrate judge, I have approached each case by objectively and carefully assessing the factual record while impartially following the precedents of the United States Supreme Court and the Court of Appeals for the Fourth Circuit, giving those precedents full force and effect. If I were fortunate enough to be confirmed as a district judge, I would continue that practice.

- b. If so, what biases and stereotypes do you bring to the courtroom that you need to set aside and how do you do so?**

Response: I do not feel that I bring any bias or stereotype to the courtroom. I believe that my record as a magistrate judge demonstrates my ability to render thoughtful, even handed, and impartial decisions in a wide array of cases, civil and criminal.

- 2. In your questionnaire you indicated that you have been a member of The Club since 2012. Will you please tell us more about this organization?**

Response: The Club is a group largely made up of academics who meet monthly during the academic year. Members have included local university presidents and other scholarly leaders at the university and secondary school levels, teaching medical doctors, leaders in the local arts community, historians, authors, university chaplains, and judges. The members are lifelong learners with an interest in hearing from others about their areas of expertise. An in-depth topic of academic study and a book review are presented each month, but I have not yet made a presentation to the group.

- 3. You have expressed admiration for Justice Frankfurter. What do you admire about him?**

Response: Justice Frankfurter served on the Supreme Court of the United States as a naturalized citizen. I conduct naturalization ceremonies, and when I welcome newly

naturalized citizens, I mention several accomplished naturalized citizens in this nation's history. I include Justice Frankfurter as an admirable example of how much any citizen (naturalized or natural born) can, with hard work, achieve in the United States.

4. **In your notes from a “Women’s Networking Forum” on June 22, 2005, you write “In our courthouse, we distinguish between bureaucrats and public servants.” Can you please explain what you mean by distinguishing between bureaucrats and public servants?**

Response: In the Eastern District of Virginia, we strive to create an atmosphere in which all court employees, including judges, operate with courtesy and professionalism. I was trying to indicate that the ethos in the Eastern District was to act as public servants, and not as someone getting a job done for the sake of finishing. I meant to describe what constitutes a key component to public service: being patient, helpful and courteous to the public that is served. I expressed my belief that, generally, employees in our court embody that desire to help individuals find where to get an answer, even if they have received a call from someone that they, themselves, cannot answer directly. Any reference to bureaucratic actions was in contrast to how individuals, including me, in our court operate.

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

Response: While a judge must possess many vital attributes, the most important would be the commitment to follow the rule of law while fairly, impartially, and objectively deciding cases. I believe my decisions as a magistrate judge demonstrate that I strictly adhere to the rule of law, and render decisions fairly and impartially.

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 trial judge should be respectful, patient, hard-working, and courteous. Each litigant should be given a full and fair opportunity to be heard while a judge applies the rules and the law to the facts with fairness and clarity. I believe I have displayed this temperament while serving as a magistrate judge for nearly nine years.

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: A bedrock responsibility of a district judge is to follow controlling precedent. If confirmed, I would follow the binding precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit at all times, regardless of my personal views.

- 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: In cases of first impression I would first turn to the text of the applicable regulation, statute, or constitutional provision and apply the canons of statutory construction to determine whether the provision's meaning was clear and unambiguous. If the meaning were clear and unambiguous, the statute would be applied as written. If the language were ambiguous, following the same canons of construction, I would turn to precedent from the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit for guidance, such as looking to whether they have interpreted provisions in other laws with similar wording. If further guidance were needed, I would review case law from other jurisdictions within the United States analyzing the same or analogous regulatory, statutory or constitutional provision.

- 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: A district judge cannot render a decision inconsistent with controlling precedent regardless of his or her personal views regarding the correctness of the binding precedent. I have followed controlling precedent as a magistrate judge, and I would continue to do so if I were fortunate enough to be confirmed as a district judge.

- 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. Without reaching constitutional questions it need not address, a federal court should declare a statute unconstitutional only in the rare circumstances when Congress has clearly exceeded its authority under the Constitution when enacting the statute, or when the statute itself violates the Constitution. If it became necessary to consider the constitutionality of a particular statute, I would apply the standards established by the Supreme Court of the United States and the United States Court of Appeals for the Fourth Circuit in my analysis.

- 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. 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.

- 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 am deeply committed to the rule of law, which requires strict adherence to *stare decisis* independent of any judge's ideology or motivation. My record over nearly nine years as a magistrate judge demonstrates that I ground my decisions in precedent, the text of the law, and the facts before me. I have never allowed my personal beliefs to influence my judicial decision-making, and, if confirmed as a district judge, I would continue this strict adherence to the rule of law.

**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 magistrate judge over nearly nine years provides the best evidence of my commitment to putting aside personal views and treating all who come before me fairly, respectfully, and impartially. A review of my decisions attests to my objectivity and impartiality. If confirmed as a district judge, I would continue to adhere to the principle of equal treatment under the law.

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

Response: If confirmed, I would continue to manage my caseload as I have the significant caseload I have carried for the past nine years as a magistrate judge. I currently utilize the reports available under the district court's electronic filing system. In addition, I have developed my own system for case management, which includes issuing scheduling orders with strict discovery deadlines and firm trial dates in accordance with the Federal Rules of Civil Procedure and our local rules. If confirmed, I would continue to manage actively my caseload with the assistance of chambers, and clerk's office, staff. I would work to promptly dispose of motions and discovery disputes, including being available for status conferences. I would encourage the parties, early on and during all aspects of the case, to consider settlement options while they continue to litigate assiduously.

**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 have an essential role in controlling the pace and conduct of litigation. Evenly applied, final, and predictable deadlines ultimately serve all who participate in the judicial system well. If confirmed, I would play an active role in managing my cases. I would set firm scheduling deadlines, promptly decide motions, and efficiently resolve discovery disputes. I would encourage consideration of settlement options, which, in our division, often involves referral to a magistrate judge for that purpose. I would abide by the Speedy Trial Act in criminal cases. I would, however, look to the needs of each case individually, allowing attorneys to establish a record as to the matters at issue, and their needs in discovery and litigation. I would balance efficiency alongside assuring that each litigant had a full and fair opportunity to be heard.

- 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: In addressing the record before me, I begin with a thorough review of the facts because any legal analysis must flow from the facts at bar. I then study the controlling law and precedent, consider the parties' arguments, and issue a decision fairly and impartially, applying the controlling law from the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit under the appropriate standard of review. When issuing a written decision, I strive to communicate clearly in an organized and understandable manner. In deciding cases, I seek to assure that, even when parties do not prevail, they believe they have had an opportunity to be heard and that their case has been given full and fair consideration.

- 17. 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.

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

Response: I received the questions from personnel at the Department of Justice on the afternoon of March 4, 2014. I prepared responses and reviewed them with a representative of the Office of Legal Policy of the Department of Justice, and asked that my responses be submitted to the Senate Judiciary Committee after that review.

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

Response: Yes, these answers reflect my true and personal views.

**Questions for the Record  
Senator Ted Cruz**

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**Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice’s judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: I cannot say that my approach to judging can readily be captured in a word describing a judicial philosophy. I do, however, approach judging with certain principles in mind. I exhibit a strong commitment to *stare decisis* and the rule of law, I respect the limited role of the federal courts within the separate branches of government, and I seek to apply binding law to the facts in a fair and impartial manner. I work hard and attend court prepared, approaching each matter mindful of how important the case is to the litigants. I also hear cases with an open mind, seeking to give each litigant a fair shot within the appropriate constraints that binding precedent places on all of us. While I do not claim to know the philosophies of the justices of the Warren, Burger, or Rehnquist courts sufficiently well to compare my approach to any of theirs, I believe that many, if not all, of the justices presiding in those courts might likely embrace the practices I describe.

**Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: If confirmed as a district judge, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit, including the analysis in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008), where the Court considered the original public meaning of the text.

**If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If confirmed, as a district judge, I would not, and could not, overrule precedent.

**Explain whether you agree that “State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power.” *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: If confirmed as a district judge, I would be bound by, and would follow, the Supreme Court’s decision in *Garcia* without regard to any personal agreement or disagreement with its reasoning. This would be true of any Supreme Court or Fourth Circuit case.

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

Response: United States Supreme Court precedent dictates that the Commerce Clause allows congressional regulation of commerce in three ways: Congress may (1) "regulate the use of the channels of interstate commerce"; (2) "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and, (3) "regulate those activities having a substantial relation to interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995); *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow binding Supreme Court and Fourth Circuit precedent in assessing the scope of congressional authority under the Commerce Clause.

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

Response: The Supreme Court has articulated the judicially enforceable limits on the President's authority to act in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) and *Medellin v. Texas*, 552 U.S. 491, 524 (2008). Those cases provide that the President's authority to act must flow either from an act of Congress or from the Constitution. If confirmed, I would apply that Supreme Court precedent and any Fourth Circuit precedent defining the limits of executive action.

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

Response: The Supreme Court has held that rights are "fundamental" for purposes of substantive due process when they are freedoms protected by the Bill of Rights that are "objectively, deeply rooted in this Nation's history and tradition" and are "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 omitted) (internal quotation marks omitted). If confirmed, I would follow Supreme Court and Fourth Circuit precedent in deciding issues concerning whether a right is "fundamental" for purposes of the substantive due process doctrine.

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

Response: The Supreme Court has held that government actions affecting the immutable and protected classifications of race, alienage, and national origin are subject to strict scrutiny under the Equal Protection Clause, while government actions implicating gender and illegitimacy are subject to intermediate scrutiny. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If confirmed, I would follow Supreme Court and Fourth Circuit precedent in determining what classifications are subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

**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: Respectfully, as a magistrate judge or if confirmed as a district judge, I would not express any opinion or projection as to the status of racial preferences in public higher education 15 years from now. If confirmed, I would, impartially and objectively, apply the binding precedent established in *Grutter* and in the Supreme Court’s recent decision of *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013), as well as any Fourth Circuit decisions, when addressing racial preferences in public higher education.