

**Senator Chuck Grassley
Questions for the Record**

**Leo Theodore Sorokin,
Nominee, United States District Judge
United States District Court for the District of Massachusetts**

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

Response: Commitment to rendering impartial decisions under the rule of law is the most important attribute of a judge. I believe that my record as a magistrate judge for almost nine years demonstrates that I possess this attribute.

2. 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: Judges must treat each person before the Court with respect and civility. Judges must also possess the patience to listen, with humility, to the parties, witnesses and counsel. I believe I possess these qualities and that I have demonstrated these qualities in the course of my service as a magistrate judge since 2005.

3. 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 a district judge, I will follow the legal precedents of the Supreme Court and the First Circuit regardless of any personal opinions or whether I agree or disagree with those precedents, as I have done for almost nine years as a magistrate judge.

4. 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 as a district judge, in deciding a case of first impression, I would first turn to the text of the applicable statute, regulation or provision. If the language of the applicable text was unambiguous, that language would control. If the language was ambiguous, I would use the canons of construction established by the Supreme Court and the First Circuit to assist me in interpreting the text. I would also consider precedents from other courts (i.e., courts other than the Supreme Court and the First Circuit) that have interpreted the same or similar texts --- precedents from other courts would not be

controlling, but would be worthy of consideration if persuasive. Finally, I would follow the principle of judicial restraint by endeavoring to decide only the issue requiring decision in order to resolve the case before the court.

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

Response: I would apply the binding Supreme Court and First Circuit precedent without regard to my personal opinions.

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

Response: Judges act consistent with their duties in declaring a statute enacted by Congress unconstitutional when the statute in question, considered under the applicable precedent, necessarily either exceeds Congress's authority or violates a provision of the Constitution despite the presumption of constitutionality assigned to such statutes and when the case at hand requires resolution of the constitutional question.

- 7. 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.

- 8. 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 committed to rendering impartial decisions under the rule of law. I believe that my record as a magistrate judge for almost nine years demonstrates that commitment.

- 9. 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 judge, I pledge to decide cases based upon an impartial application of the law after considering with an open mind the arguments of all parties before the Court. I will treat all parties before me with fairness, respect, civility and patience. I consider the oath of office to be a solemn oath. I pledge to follow the oath without reservation as I believe I have done in my service as a magistrate judge.

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

Response: If confirmed as a district judge, I will manage my caseload as I have managed my cases (both consent and referred) as a magistrate judge. In accordance with the Federal

Rules of Criminal and Civil Procedure as well as the District of Massachusetts Local Rules, I establish scheduling orders with firm deadlines and trial dates. I regularly convene status conferences to ensure that cases move forward expeditiously, and I issue prompt rulings on motions filed by the parties. I have found active management of cases promotes their fair and timely 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: Yes. The parties should always have the opportunity to discuss with the Court the proper pace and manner in which the litigation should proceed. The Court, however, must ensure that the case proceeds in a fair and timely manner giving consideration to the relevant facts and circumstances of the individual case. Trial judges have a number of tools available to them to control the pace of litigation, including issuing scheduling orders, convening regular status conferences to review the case and establishing firm trial dates.

12. As a Magistrate 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 question presented for decision by the case and the relevant facts in light of the testimony or written factual submissions to the Court. To arrive at a decision, I apply the relevant law to the facts of the case considering the applicable constitutional or statutory provisions. Finally, I try to explain the reasons for my decision to the parties in clear and understandable terms so that each party, win or lose, understands that I listened to and considered fully and fairly their arguments.

13. As a Magistrate Judge, you proposed the creation of the District of Massachusetts's Court Assisted Recovery Effort.

a. Do you envision an altered or expanded role for the program in the District Court's criminal docket?

Response: I have not considered altering or expanding the District of Massachusetts Court Assisted Recovery Effort (CARE) which has operated, under my direction, for almost eight years. If I did consider altering or expanding it, I would consult with the other judges of the court, the Probation Office, the United States Attorney's Office and the Federal Public Defender's Office, as I did when starting CARE. On behalf of the District of Massachusetts, I have proposed a pilot program to the Bureau of Prisons (BOP) that would coordinate the BOP's Residential Drug Abuse Program (RDAP) with the CARE program so that drug addicted defendants participating in RDAP in prison transition seamlessly into the CARE program upon the commencement of supervised release. This proposal to the BOP is referenced in response to Question 12(c) of my Senate Judiciary Questionnaire. If implemented, the coordination would not change the eligibility standards for admission to CARE.

- b. If so, please describe what defendants would be eligible and whether you think the current eligibility standards for admission should be changed.**

Response: Please see my response to Question 13(a).

- 14. 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.

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

Response: I received and read these questions on March 4, 2014. On March 5, 2014, I prepared my answers to the questions and forwarded them to an attorney in the Office of Legal Policy of the Department of Justice for review. On March 7, 2014, I finalized my responses and authorized transmittal of the answers to the Committee.

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

Response: Yes.

Questions for the Record
Senator Ted Cruz

Leo Theodore Sorokin,
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United States District Court for the District of Massachusetts

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: My judicial philosophy is that a judge must always handle each case with an impartial and unbiased mind. A judge should treat all parties with respect and patience and give the legal arguments of all parties serious consideration. A judge must apply the law as written and follow binding precedent. This is the cornerstone of our system of justice under the law. I do not have sufficient information to state which Supreme Court Justice on the Warren, Burger, or Rehnquist Courts has a judicial philosophy most analogous to my own.

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: The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), recognized that the public understanding of the Constitution, at the time it was ratified, is an important consideration relative to constitutional interpretation. If confirmed as a district court judge, I will follow Supreme Court and First Circuit precedent on this issue.

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 court judge, I would not overrule any precedent. I would be bound by the precedent of the Supreme Court and the First Circuit.

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 court judge, I would be bound by the Supreme Court’s decision in *Garcia* and subsequent decisions which identify constitutional limitations on congressional power. I would apply the holdings in those cases without regard to whether or not I personally agreed with the decisions.

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

Response: In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia observed in a concurrence that Congress may regulate non-economic activity that has a substantial relation to interstate commerce, or when “regulation is a necessary part of a more general regulation on interstate commerce.” In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), and *United States v. Morrison*, 529 U.S. 598, 608-09 (2000), the Supreme Court struck down federal statutes where Congress lacked authority under the Commerce Clause. If confirmed as a district court judge, I would follow Supreme Court and First Circuit precedent in deciding issues concerning the extent 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 authority of the President to act “must stem from either an act of Congress or from the Constitution itself.” *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (internal citations omitted). The applicable analysis for a court to determine whether executive action exceeds presidential authority is set out in Justice Jackson’s concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634-55 (1952). If confirmed as a district court judge, I would follow Supreme Court and First Circuit precedent in deciding any challenges to executive action.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted), the Supreme Court held that fundamental rights include “the specific freedoms protected by the Bill of Rights,” and “those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition,” and which are “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed[.]” If confirmed as a district court judge, I would follow Supreme Court and First Circuit precedent in deciding issues concerning fundamental rights.

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

Response: The Supreme Court has identified the classifications which are subject to heightened scrutiny under the Equal Protection Clause. They include race, alienage, and national origin, which are subject to strict scrutiny; and gender and illegitimacy, which are subject to intermediate scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If confirmed as a district court judge, I would follow Supreme Court and First Circuit precedent in determining what classifications are subject to heightened scrutiny and how to apply such scrutiny to the facts of a particular case.

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 do not have sufficient information or expertise to have any personal expectation on this issue, and in any event, my personal expectation would play no role in any judicial

decisions. If confirmed as a district court judge, I would follow the holdings of *Grutter*, *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and any other Supreme Court or First Circuit precedent on the use of race in admissions to public institutions of higher education.