

**Senator Chuck Grassley
Questions for the Record**

**Judith Ellen Levy
Nominee, U.S. District Judge for the Eastern District of Michigan**

- 1. In 2009 at the Hot Topics in Fair Housing Event, you said “the issue of racial integration is the most pressing issue facing fair housing enforcers.” What role do you believe the courts should play in the issue of racial integration?**

When I gave that talk, I was speaking as an advocate for the government, which has a responsibility to enforce federal laws regarding fair housing. If confirmed as a judge, my role would be to uphold and apply the law as it stands, not to advocate for any one side.

The role of the district court judge should be to approach every case with an open mind and be fair, impartial and respectful to all participants. A trial court judge should also apply established law to the facts in each case in order to reach a carefully reasoned and thoughtfully articulated decision. If I am confirmed to serve as a district court judge and a case is assigned to me that relates in some manner to race discrimination or racial integration, I would use this approach to handling the case. The federal courts are limited to the cases or controversies that are brought before them and in all cases must apply the law to the facts. Federal courts do not have any other specific role in the issue of racial integration.

- 2. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

No. A judge should be fair and impartial to all parties and participants in the process.

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

A judge should approach every case with an open mind and be fair, impartial and respectful to all participants. A trial court judge should also apply established law to the facts in each case in order to reach a carefully reasoned and thoughtfully articulated decision. I believe these are the most important attributes of a judge, and I possess the ability to do them.

- 4. 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 work hard and be fair, impartial, patient and respectful to all participants. I consider these to be the most important elements of judicial temperament and I meet this standard.

- 5. 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.

- 6. 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 I am confirmed as a district court judge and I am faced with a case of first impression involving interpretation of a statute, I would turn first to the language of the statute. If the text is clear, I would stop there and apply the plain language of the statute to the facts of the case before me. If the statutory language did not lead to a clear understanding, I would look to the structure and context of the provision, and turn to Supreme Court and Sixth Circuit precedent interpreting similar provisions. If these were not available, I would look to relevant decisions by other Courts of Appeals for guidance.

- 7. 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 federal judge, I will apply Supreme Court and Sixth Circuit precedent in all cases regardless of whether I agree with the decisions.

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

Response: I believe that a district court judge must presume that a statute passed by Congress is constitutional and should be found unconstitutional only if it clearly conflicts with the Constitution as interpreted by the Supreme Court and relevant circuit courts, or if Congress clearly acted beyond its constitutional authority.

- 9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: As an Assistant United States Attorney, I have always applied established law to the facts of any matter I have handled in order to determine whether to recommend that the United States bring a case in federal court or assert a particular defense. My own political views have never played a role in any decision I have made on behalf of the United States, and if confirmed as a district court judge, I would not permit my personal beliefs to play a role in my decision-making.

10. 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: I have never permitted my personal views to play a role in how I have approached a case or matter as a practicing attorney, and I would not do this as a judge. I would put aside any personal views I might hold in order to reach a fair and unbiased decision in each case.

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 do not believe foreign law or the views of the “world community” should apply when determining the meaning of the Constitution.

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

Response: If I am confirmed as a district court judge, I will manage my caseload by working hard, staying engaged with setting scheduling orders, and referring pre-trial matters to the assigned Magistrate Judge where appropriate.

13. 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 trial court judges have a very important role to play in controlling the pace and conduct of litigation. If confirmed as a district court judge, I will strive to ensure that cases move forward in a timely and efficient manner. For example, I would take an active role in issuing scheduling orders in cases and ensuring that discovery disputes in civil cases are resolved expeditiously. I would also refer matters to the assigned Magistrate Judge where appropriate.

14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: If confirmed as a district court judge, I will reach decisions by applying established law to the facts in each case in order to reach a carefully reasoned and thoughtfully articulated decision. I will look to the applicable Supreme Court and Sixth Circuit precedent to guide my decisions.

I expect that the most difficult part of this transition will be managing complex criminal cases with multiple defendants; however, I feel prepared to take on this challenge as a result of my experience in the United States Attorney’s Office over the last thirteen years.

15. 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 nature of the communications.**

Response: I have not had any contact with the AAJ or any group associated with it.

- 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.

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

Response: I received these questions from the Department of Justice on November 6, 2013, and prepared my responses. I discussed my responses with a representative of the Department of Justice, and I authorized the Department of Justice to submit my responses.

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

Response: Yes.

**Questions for the Record
Senator Ted Cruz**

**Judith Ellen Levy
Nominee, U.S. District Judge for the Eastern District of Michigan**

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 believe that a judge should approach each case with an open mind and be fair, impartial, and respectful to all participants in the process. A district court judge should also apply established law to the facts in each case in order to reach a carefully reasoned and well-articulated decision.

I am most familiar with the judges I practice in front of and I have not studied the judicial philosophies of Supreme Court Justices on the Warren, Burger or Rehnquist Courts.

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: I believe that constitutional interpretation should be undertaken by following Supreme Court and Sixth Circuit precedent. For example, the Supreme Court has applied originalism, and specifically, original public meaning, in cases including *District of Columbia v. Heller*, 554 U.S. 570 (2008). I would follow Supreme Court precedent in all cases.

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: I cannot think of any circumstance in which I would overrule precedent as a district court judge.

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, I would follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), which held that certain provisions of the Fair Labor Standards Act were constitutional. However, after the *Garcia* case, in *Printz v. United States*, 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144 (1992), the Supreme Court struck down the imposition of federal regulations related to the purchase of guns and the handling of low level radioactive waste upon states. If confirmed, I would faithfully apply these

decisions and any other relevant Supreme Court or Sixth Circuit precedent applicable to the balance between federal and state sovereign powers as set forth in the Constitution.

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 set forth parameters for analyzing the constitutionality of a statute enacted pursuant to the Commerce Clause in *United States v. Morrison*, 529 U.S. 598, 610-611, 613 (2000), and *United States v. Lopez*, 514 U.S. 549, 560-561, 566-567 (1995). In both of those cases, the Court struck down acts of Congress and highlighted the non-economic nature of the activity that Congress had sought to regulate. However, the Court did not hold that non-economic activity can never be regulated by an act of Congress, and in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia explained that “even non-economic activity . . . that is a necessary part of a more general regulation of interstate commerce” can properly be regulated. *Id.* at 37 (Scalia, J., concurring). If I am confirmed, and a case presenting this issue came before me, I would apply all relevant precedents from the Supreme Court and the Sixth Circuit.

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

Response: The general standard for evaluating the President's ability to issue executive orders or actions is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952), (Jackson, J. concurring). In order to issue an executive order or take executive action, the President must have the power directly derived from the Constitution or directly given to the President through an act of Congress. *See Id.* at 585.

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

The Supreme Court has identified rights as “fundamental” when they are “objectively, ‘deeply rooted in this Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice exist if they were sacrificed.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted).

If I am confirmed as a district court judge, I would follow Supreme Court precedent to determine whether the Court had characterized a particular right as “fundamental.” If the Supreme Court has not ruled on the particular right at issue, I would follow Sixth Circuit precedent.

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

Response: The Supreme Court has held that a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it classifies based on race, alienage, national origin, or gender. The Court has also ruled that heightened scrutiny should be applied when a classification burdens a right the Court has identified as “fundamental.”

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: If faced with a case raising the issue of the use of racial preferences in admissions decisions by institutions of public higher education, I would apply all applicable Supreme Court and Sixth Circuit precedent, including *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013). If confirmed to serve as a district court judge, my personal views and expectations would play no role in deciding a case on this or any other issue.