

**Senator Chuck Grassley
Questions for the Record**

**Manish S. Shah
Nominee, U.S. District Judge for the Northern District of Illinois**

- 1. In 2008 you were panelist for an Asian Pacific American Law Students Association event where you discussed, “the role of political ideology in government services and the importance in legitimacy in federal law enforcement,” as well as “the role of a prosecutor, the benefits and drawbacks of being a government prosecutor in contrast to a litigator in private practice, and the general difficulty of reconciling differences of opinion with the administration setting policy.” You did not provide notes, transcript, or recording of the event.**

- a. What is your view of the role of political ideology in government services?**

Response: I was a panelist for a discussion of careers in government service in February 2008. Another member of the panel was a Deputy Assistant Attorney General for the Department of Justice, and he spoke about political ideology in Executive Branch decisionmaking. As I recall, my comments in response were that political ideology had no place in my position as an Assistant United States Attorney and that political neutrality was critically important to the legitimacy of federal law enforcement. I also discussed the U.S. Attorney’s Office’s well-developed culture of making prosecutorial decisions without regard to political influence.

If confirmed as a district court judge, I would make decisions without regard to political ideology.

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

Response: The most important attribute of a judge is open-mindedness. In order to fairly resolve disputes, the judge must be able to listen to all sides, appreciate the arguments being made, and fully understand the applicable legal regime. This requires an open mind and intellectual curiosity. I believe I possess these attributes.

- 3. 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 must be even-keeled and patient, in order to assure the litigants that they will have their day in court before a fair tribunal. I believe I have these qualities.

- 4. 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: Our legal system depends on the stability and predictability that come from adherence to precedent. If confirmed, I would be committed to following the precedents of higher courts faithfully and giving them full force and effect, without regard to my personal views.

- 5. 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 there were no controlling precedent on an issue, I would start first with the text of the legal provision before me and apply the text to the facts of the case. If the text were ambiguous, I would turn next to analogous precedent from the Court of Appeals and the Supreme Court in which similar issues were decided and employ the methods used by those higher courts.

- 6. 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 I were confirmed as a district court judge, I would apply the precedential decisions of the Court of Appeals and the Supreme Court without regard to any belief I may have about how the court rendered its decision.

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

Response: Courts presume that statutes enacted by Congress are constitutional, and a court should declare a statute unconstitutional only when the issue has been presented in a proper case or controversy and only when it has been established that Congress exceeded its authority in enacting the statute.

- 8. 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: Unless directed otherwise by a decision of the Supreme Court or binding precedent from the Court of Appeals, a district court cannot determine the meaning of the United States Constitution by looking to contemporary foreign law, and therefore, judges should not rely on foreign law when interpreting the Constitution.

- 9. 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: Allowing political ideology or motivation to determine legal decisions would undermine the integrity of our judicial system. As a prosecutor, I have never made decisions based on political motives, and I believe the record of my service demonstrates my commitment to the rule of law.

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: A judge must put aside any personal views and apply the law as enacted by the legislature and interpreted by the Court of Appeals and the Supreme Court. The integrity of our legal system depends on litigants relying on fair and open-minded tribunals to resolve their disputes. Therefore, if confirmed, I would put aside my personal views and be fair to all who appear before me.

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

Response: If confirmed, I would manage my caseload by setting reasonable deadlines, being prepared to discuss every case when it comes before me, and narrowing disputes as early as possible for prompt resolution.

12. 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, judges have a role in controlling the pace and conduct of litigation. If confirmed, I would control my docket by setting appropriate deadlines for the parties and for the court to issue rulings. I would meet those deadlines set for rulings, be prepared to discuss every case when it comes before me, and expect the parties to be similarly prepared to address issues comprehensively and promptly. A judge can also monitor the progress of litigation to ensure that the litigants are engaging in pretrial discovery responsibly and efficiently, and narrowing the issues in dispute early.

13. You have spent your entire legal career as an advocate for your clients, primarily as an attorney representing the United States. 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, I would reach a decision by: paying close attention to the arguments of the parties; ensuring that I fully understand the claims and arguments being made; researching the applicable law by reference to the text of the law and binding precedent; and finally, explaining my decision and its rationale so that the parties understand how and why the outcome was reached. I expect the most difficult part of the transition from advocate to judge will be to manage a busy caseload efficiently and to learn quickly and thoroughly those substantive areas of law that will be new to me.

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 these questions on November 20, 2013. I had previously reviewed similar questions posed to other nominees, and drafted my answers to these questions on November 20 and 21. I submitted a draft of my responses to the Department of Justice Office of Legal Policy on November 21, 2013. I received comments, and then finalized my answers on December 3, 2013.

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

Response: Yes.

Manish S. Shah
Nominee, United States District Court for the Northern District of Illinois
Responses to Questions for the Record
from Senator Ted Cruz

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: If confirmed, my judicial philosophy would be to approach each case with an open mind, consider carefully the arguments of the parties, and follow the text of the law as written and the binding precedent that applies. This technique may sound more mechanical than philosophical, but adherence to text and precedent is critical to the stability and predictability of our judicial system. Of the 29 different Justices who served on the Warren, Burger and Rehnquist Courts, I do not know which one had a philosophy most analogous to the one I have described, but I suspect most, if not all, of the Justices shared this approach.

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 meaning of the words as understood at the time of the ratification of a constitutional provision must be considered when interpreting the Constitution, as the Supreme Court has stated in cases such as *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)).

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 I were confirmed as a district court judge, I would be bound by the precedent of the Seventh Circuit and the Supreme Court, and I would not overrule any 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: In overruling *National League of Cities v. Usery*, 426 U.S. 833 (1976), the Court in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), observed that its earlier, judicially created limitation on the Commerce Clause power was unworkable. If confirmed, I would be bound by the Court’s decision in *Garcia*, and I would apply it without regard to whether or not I personally agreed that State sovereign interests were protected by the inherent structure of the federal system.

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

Response: Congress may regulate the use of the channels of interstate commerce, the instrumentalities of interstate commerce (or persons or things in interstate commerce), and activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-559 (1995); *United States v. Morrison*, 529 U.S. 598, 608-609 (2000). This power, in conjunction with the Necessary and Proper Clause power, was constitutionally applied to regulate intrastate, non-commercial marijuana cultivation in *Gonzales v. Raich*, 545 U.S. 1 (2005). Moreover, in describing the Supreme Court's precedents in this area, Justice Scalia has observed that it is possible for Congress to regulate "noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Id.* at 37 (Scalia, J., concurring). If confirmed, I would follow these and all other binding precedents.

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

Response: The President's authority to act must stem either from an act of Congress or from the Constitution itself. *Medellín v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). Assuming that a case presents a justiciable controversy involving a litigant with Article III standing to challenge Presidential orders or actions, the judiciary will review executive orders and actions by determining whether: (1) the President acted pursuant to express or implied authorization from Congress; (2) the President acted with support from congressional inertia, indifference or quiescence; or (3) the President acted in a manner incompatible with the expressed or implied will of Congress. *Id.* at 524-525. The judiciary is most likely to defer to the President under the first scenario, and less likely to sustain executive action under the third scenario.

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

Response: The Supreme Court has established a method for analyzing substantive due process claims, and under the Court's precedents, fundamental rights are ones that, as an objective matter, are "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, 720-721 (1997) (internal quotations and citations omitted).

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

Response: "[E]qual protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). Suspect classifications include classifications "by race, alienage, or national origin." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). In addition, legislative classifications based on gender and illegitimacy call for heightened scrutiny. *Id.*; see also *United States v. Virginia*, 518 U.S. 515, 531 (1996).

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: The Supreme Court held that race-conscious admissions policies must be limited in time, and have a termination point. *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003). I have no expectation about the specific termination point appropriate for any particular admissions policy, and the Court held that “[c]ontext matters when reviewing race-based governmental action under the Equal Protection Clause.” *Id.* at 327. If I were confirmed as a district court judge, I would be bound by and follow the Supreme Court’s precedents.