

**Senator Grassley  
Questions for the Record**

**Clare E. Connors  
Nominee, U.S. District Judge for the District of Hawai'i**

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

Response: The most important attribute of a judge is the ability to apply the law fairly and faithfully to the facts of every case. I believe I do possess this ability.

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: While there are many elements that constitute appropriate judicial temperament, among the most important is that a judge treat all litigants respectfully and fairly. In doing so, a judge should nevertheless act decisively with respect to issues raised in formal submissions and that arise during courtroom appearances. I do believe I possess the ability to adjudicate issues respectfully and decisively.

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: Litigants are entitled to rely upon the precedent of the Supreme Court and the Circuit Courts. Accordingly, I would apply all binding precedent faithfully to the facts presented in cases that came before me, even if I personally disagreed with the precedent.

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: In deciding a case of first impression that involves the interpretation of a statute, I would look first to the plain language of the statute. If the plain language was unambiguous, I would decide the case based upon the clear language. If ambiguous, I would then apply the principles of statutory construction, including consideration of other provisions of the statute that might be relevant as well any non-controlling precedent in other jurisdictions. If further guidance was necessary, I might then consider applicable legislative history.

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 decision of the Supreme Court or the Court of Appeals, even if I personally believed the decision was rendered in error.

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

Response: There are only two situations in which a federal court might declare a statute enacted by Congress unconstitutional: (1) if Congress exceeded its authority under the Constitution or (2) if Congress acted in violation of the Constitution.

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, a federal judge should not rely upon foreign law or the views of the “world community” in interpreting the Constitution.

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: As a litigant, I rely upon the unbiased and fair application of the law and precedent by judges before whom I appear. If confirmed, I would act consistently with these expectations. As such, neither any political ideology nor any underlying motivations would play a role in any decision I would render.

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: Any personal views would be irrelevant to the resolution of cases that might be litigated before me, if confirmed. As a federal prosecutor tasked with enforcing existing law, I treated defendants and counsel fairly during pretrial, trial, and post-trial proceedings without regard to any personal views.

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

Response: I intend to manage my caseload by working closely with the federal magistrate judges to ensure the prompt setting of deadlines, timely resolution of discovery issues and dispositive motions, and the utilization of alternative dispute resolution options as early in the case as is practicable.

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. Federal district judges play an important role in the pace and conduct of litigation, and the parties have every right to expect a district judge to enforce the deadlines set by the Federal Rules of Procedure (both criminal and civil) as well as the Local Rules of Practice for the United States District Court for the District of Hawai‘i. Parties also should be able to rely upon the timely disposition of motions, which often impact the litigants’ decisions concerning discovery and other pre-trial matters. If confirmed, I would work closely with the federal magistrate judges to ensure timely resolution of discovery matters, adherence to court deadlines, timely adjudication of motions, and the early exploration of settlement possibilities.

12. **President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: It is not appropriate for a judge to decide a case based upon empathy or “what is in the judge’s heart.” The critical ingredient is supplied by the fair application of the law to the facts, no matter how difficult the case.

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

Response: I received the questions on February 3, 2016, and answered them the same day. Prior to submitting the answers to the Committee, I reviewed them with an official from the United States Department of Justice.

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

Response: Yes.

**Written Questions of Senator Jeff Flake**  
U.S. Senate Committee on the Judiciary  
*Judicial Nominations*  
January 28, 2016

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**1. What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?**

Response: My approach to statutory interpretation is to look first at the plain language of the statute. If the plain language is clear and unambiguous, the matter should be decided based upon the plain language. If the language is ambiguous, then it is necessary to apply the principles of statutory construction, including consideration of other provisions of the statute that might be relevant as well any non-controlling precedent in other jurisdictions. If guidance is still needed at this point, then a judge may look to applicable legislative history.

**2. What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: The 10th Amendment reserves to the States those powers not delegated to the federal government by the Constitution. In this way, the 10th Amendment might be applied by a federal judge when determining whether a specific federal statutory scheme has improperly exceeded the delegated authority of Congress. *See, e.g., New York v. United States*, 505 U.S. 144 (1992).

**3. Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?**

Response: In my professional experience, the current standing doctrine has neither fostered nor impeded the ability of litigants to obtain relief in our legal system. If confirmed, I would ensure that all litigants, whether represented by counsel or appearing *pro se*, are treated fairly and that any issues of standing are resolved consistent with the binding judicial precedent.

Questions for the Record  
Senate Judiciary Committee  
Senator Thom Tillis

Questions for Ms. Clare E. Connors

- 1. Some individuals have argued that the United States Constitution is a “living document,” subject to different interpretations as society changes. Do you believe this statement is true?**

Response: The Constitution provides a permanent framework for resolving legal matters and it is not the role of a judge to interpret the Constitution for the purpose of addressing societal change.

- 2. What role, if any, should societal pressure or popular opinion play in interpreting statutes or the United States Constitution?**

Response: Societal pressure and popular opinion should not play a role in a federal judge’s interpretation of statutes or the United States Constitution.

- 3. Please define judicial activism. Is judicial activism ever appropriate?**

Response: While different definitions of judicial activism exist, I believe it exists when a judge attempts to adjudicate matters beyond the facts in controversy or deviates from binding precedent. In this sense, judicial activism is never appropriate.

- 4. When, if ever, is it appropriate for a federal court to rule that a statute is unconstitutional?**

Response: There are only two situations in which a federal court might declare a statute enacted by Congress unconstitutional: (1) if Congress has exceeded its authority or (2) if Congress has acted in violation of the Constitution.

- 5. What is a fundamental right? From where are these rights derived?**

Response: A fundamental right is one that is “deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). Fundamental rights derive from the United States Constitution and Supreme Court precedent.

- 6. Do you believe the First Amendment of the United States Constitution protects private citizens and businesses from being required to perform services that violate their sincerely held religious beliefs?**

Response: The Supreme Court has held: “The principle that government may not enact laws that suppress religious belief or practice is so well understood that few violations are recorded in our opinions.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 523 (1993). In addition, in its recent consideration of the Religious Freedom Restoration Act, the Supreme Court affirmed that private citizens and businesses shall not be substantially burdened in the exercise of their sincerely held religious beliefs. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). This precedent, which requires the accommodation of sincerely held religious beliefs except in the rare instance where the government furthers a compelling state interest by the least restrictive means, is binding and I would apply it faithfully.

- 7. What level of scrutiny is constitutionally required when a Federal or State statute or regulation related to firearms is challenged under the Second Amendment of the United States Constitution?**

Response: The Supreme Court has held that rights afforded under the Second Amendment are fundamental and “necessary to our system of ordered liberty.” *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010); *see also D.C. v. Heller*, 554 U.S. 570 (2008). Consistent with this binding precedent, a heightened level of scrutiny is required when reviewing a challenge to a Federal or State statute or regulation related to firearms.

- 8. Do you believe it is constitutional for states to require voters to show photo identification before being eligible to cast their vote?**

Response: The Supreme Court held in *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), that it is constitutional for a state to require photo identification before voters may cast their votes. This precedent is binding and I would apply it faithfully.

- 9. One challenge you will face as a federal judge is managing a demanding caseload. If confirmed, how will you balance competing priorities of judicial efficiency and due process to all litigants involved in the cases on your docket? Will you give certain cases priority over others? If so, please describe the process you will use to make these decisions.**

Response: Other than criminal cases that take priority because of constitutional implications (for example, a defendant is in custody), no litigant would be treated with more priority or consideration than any other litigant who might appear before me. I would manage the demanding caseload by working closely with the federal magistrate judges to ensure the prompt setting of deadlines, timely resolution of discovery issues and dispositive motions, and the utilization of alternative dispute resolution options as early in the case as is practicable. In adjudicating cases before me efficiently, I would ensure that all litigants are treated fairly regardless of whether they are represented by counsel or appearing *pro se*.

**10. What experiences from private practice and the United States Attorney's Office have prepared you for serving as a federal judge?**

Response: As an Assistant United States Attorney and now as a civil attorney, I have litigated a number of complicated cases in federal court involving substantial documentary evidence, aggressively litigated discovery matters, and dispositive motions regarding complex pleadings. In trying these types of cases before a jury, I have gained extensive experience with the Federal Rules of Evidence and have learned how to proceed at trial efficiently and effectively. These are skills I believe will be very useful as a federal judge, who must control the courtroom while ensuring litigants are treated fairly. In addition, I have handled complicated post-trial matters at the appellate level and in this way, have had the opportunity to reflect upon the course of trial proceedings and the soundness of decisions made during trial.

**11. You spent a significant amount of time in the United States Attorney's Office prosecuting tax crimes, fraud, and violent crimes. If confirmed, how will your experience prosecuting crimes shape your judicial philosophy when handing down sentences?**

Response: As an Assistant United States Attorney, I participated in a number of sentencing proceedings and have witnessed many judges hand down sentences in a wide array of cases in which I was involved. As a result of this experience, I became familiar with the United States Sentencing Guidelines and the applicable federal statutory sentencing provisions, all of which I will consider in imposing sentences.

**12. Do you believe the death penalty is constitutional? Would you have a problem imposing the death penalty?**

Response: The Supreme Court has held that the death penalty is constitutional and I would apply this controlling precedent faithfully. I would not have a problem presiding over a proceeding in which the death penalty is presented to a jury for determination and a death sentence is imposed.