Senator Grassley
Questions for the Record

Responses of George C. Hanks, Jr.
Nominee, United States District Judge for the Southern District of Texas

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

Response: I believe that the most important attribute of a judge is humility. Judges must always honor the oath that they have taken to follow binding precedent and treat every person who comes before the court fairly under the law and with dignity and respect. I strive to faithfully fulfill this obligation in every matter before me.

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: A good judge should always remember these words from George Washington Carver: "How far you go in life depends on your being tender with the young, compassionate with the aged, sympathetic with the striving, and tolerant of the weak and strong. Because someday in your life you will have been all of these."

With this in mind, a judge should always be patient and treat every litigant the way the judge would want to be treated—fairly under the law, and with dignity and respect. While remaining conscious of the need for judicial efficiency, a judge must give litigants a full opportunity to be heard and fully consider their positions. I believe that I have demonstrated this temperament throughout my judicial career.

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, I would follow controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, faithfully applying the doctrines of *stare decisis* and judicial restraint even if I personally disagreed with such precedents. I have followed this principle throughout my career as a state trial and appellate judge, and now as a United States magistrate judge.

Senator Cruz
Questions for the Record

Responses of George C. Hanks, Jr.
Nominee, United States District Judge for the Southern District of Texas

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: My judicial philosophy has remained the same for my entire judicial career, first as a state trial court judge, then as a state appellate judge, and now as a United States magistrate judge. I honor the oath that I have taken as a judge to treat every person who comes before me fairly under the law, and with dignity and respect. I seek to always faithfully follow the precedent handed down by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and to maintain the integrity of the legal justice system and the confidence that citizens place in the judiciary.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

Response: A responsible district judge should interpret constitutional provisions by first examining the text of the Constitution itself, and the analysis of that text must then be guided by, and bounded by, prior precedent of the United States Supreme Court and the applicable United States Court of Appeals.

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

Response: As a federal magistrate judge, my understanding of my judicial oath and the Code of Conduct for United States Judges leads me to the conclusion that it would be improper for me to express a personal critique of binding precedent. Canon 2 of the Code of Conduct states that "a judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." If confirmed, I would continue to follow controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, faithfully applying the doctrines of *stare decisis* and judicial restraint, regardless of my personal beliefs.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: I most want to emulate Chief Justice John Roberts' dedication to seeking a consensus among colleagues, where possible, because I believe this approach strengthens public confidence in the judiciary.

5. 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, other)?

Response: If confirmed and presented with a question of constitutional interpretation, I would follow controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, which includes looking to the original public meaning of the Second Amendment, as in *District of Columbia v. Heller*, 554 U.S. 570 (2008).

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

Response: I do not believe that constitutional rulings and doctrines of foreign courts and international tribunals should play any role in the interpretation of the United States Constitution and the laws of the United States.

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

Response: The role of the federal courts in administering institutions such as prisons, hospitals, and schools is bounded by the Constitution, federal statutes, and precedent from the United States Supreme Court and the applicable United States Courts of Appeals.

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

Response: If I am confirmed, I would approach all constitutional questions by beginning with the text at issue, and my analysis would then be guided by, and bounded by, prior precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: As a federal magistrate judge, my understanding of my judicial oath and the Code of Conduct for United States Judges leads me to the conclusion that it would be improper for me to identify a particular case as my personal favorite.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: As a federal magistrate judge, my understanding of my judicial oath and the Code of Conduct for United States Judges leads me to the conclusion that it would be improper for me to express a personal critique of binding precedent as being an example of judicial activism. If confirmed, I would follow controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, faithfully applying the doctrines of *stare decisis* and judicial restraint, regardless of my personal beliefs regarding this precedent.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: The term "natural law" has various meanings depending upon the context. If I am confirmed, I would approach all constitutional questions by beginning with the text at issue, and my analysis would then be guided by, and bounded by, prior precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

<u>Congressional Power</u>

12. 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 I am confirmed, I would follow *Garcia*, as well as other binding precedent from the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, without regard to any personal opinion I may have about the holding of the case.

13. 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 has identified three categories of activity that Congress may regulate under the Commerce Clause: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, and persons or things in

interstate commerce; and (3) "activities having a substantial relation to interstate commerce ... i.e., those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-61 (1995) (striking down ban on possession of firearms within 1,000–foot radius of schools because statute did not regulate an activity that "substantially affect[ed]" interstate commerce); *see also United States v. Morrison*, 529 U.S. 598, 617 (2000) (rejecting Congress' attempt to "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce"); *Gonzales v. Raich* 545 U.S. 1, 37 (2005) (Scalia, J., concurring) ("Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.").

If I am confirmed, in cases in which I am called upon to interpret the Commerce Clause, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

14. What limits, if any, does the Constitution place on Congress's ability to condition the receipt and use by states of federal funds?

Response: The Supreme Court has "long recognized" that Congress may condition a grant of federal funds upon the States' "taking certain actions that Congress could not require them to take." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2601-04 (2012) (noting, however, "Congress may use its spending power to create incentives for States to act in accordance with federal policies. But when 'pressure turns into compulsion' … the legislation runs contrary to our system of federalism."). In *South Dakota v. Dole*, the Supreme Court set out a test to determine whether conditions Congress attaches to the States' receipt of federal funds are valid. 483 U.S. 203, 207-08 (1987). Such conditions are valid only if they are (a) attached to expenditures that benefit the general welfare; (b) unambiguous; (c) reasonably related to the purpose of the expenditure to which they are attached; and (d) not in violation of an independent constitutional provision. *Id*.

If I am confirmed, in cases in which I am called upon to interpret the constitutional limits upon Congress' ability to condition the receipt and use by states of federal funds, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

15. Is Chief Justice Roberts' decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: The Supreme Court has stated that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'" *Marks v. United States*, 430 U.S. 188, 193 (1977). The portions of Chief Justice Roberts' opinion in *NFIB v. Sebelius* that

touch upon the Commerce Clause and the Necessary and Proper Clause were not joined by a majority of the other justices. *See, e.g., United States v. Sullivan*, 753 F.3d 845, 854 (9th Cir. 2014) (describing the portion of Chief Justice Roberts' opinion that touched upon the Commerce Clause as a "separate opinion," but noting that "the four dissenting justices agreed that 'one does not regulate commerce that does not exist by compelling its existence.'"); *Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 92 (4th Cir. 2013) (noting the "considerable debate" as to whether the Chief Justices' statements were dicta, but further stating that "five justices agreed that the Commerce Clause does not grant Congress the authority to 'compel' or 'mandate' an individual to enter commerce by purchasing a good or service …. [r]ather, these justices concluded that the Commerce Clause permits Congress to regulate only existing activity."); *see also United States v. Henry*, 688 F.3d 637, 641 n.5 (9th Cir. 2012) ("There has been considerable debate about whether the statements about the Commerce Clause are dicta or binding precedent."), *cert. denied*, 133 S. Ct. 996 (2013); *United States v. Roszkowski*, 700 F.3d 50, 58 n.3 (1st Cir. 2012) (declining to "express [an] opinion as to whether the ... Commerce Clause discussion was indeed a holding of the Court").

Presidential Power

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

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, Justice Jackson set forth a "tripartite framework" that is now the accepted method for evaluating the President's powers to act depending on the level of congressional acquiescence. 343 U.S. 579 (1952); *see also Medellin v. Texas*, 552 U.S. 491, 524 (2008) (stating that President's authority to act "must stem either from an act of Congress or from the Constitution itself."). If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit in reviewing executive orders and actions, and evaluating the judicially enforceable limits on the President's ability to issue such orders or actions.

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: Justice Jackson's concurrence in *Youngstown* sets forth a "tripartite framework" that is now the accepted method for evaluating the President's powers to act depending on the level of congressional acquiescence. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Medellin v. Texas*, 552 U.S. 491, 524 (2008). If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit in analyzing the limits of Presidential power under the Constitution.

Individual Rights

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

Response: The term "fundamental rights" has been defined as "those fundamental rights and liberties which 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 would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted). If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit for purposes of evaluating substantive due process and fundamental rights.

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

Response: The United States Supreme Court has held that heightened scrutiny applies to classifications based on race, alienage, national origin, illegitimacy, and gender. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit for purposes of analyzing classifications under the Equal Protection Clause.

20. 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 United States Supreme Court has held that the use of racial preferences in the admissions process for public universities must withstand strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment. *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2418 (2013).

If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit in analyzing the use of racial preferences in higher education, regardless of any personal predictions or expectations.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: The Supreme Court has held, "[i]t is well established that when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007); *see also Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2418 (2013). If I am confirmed, I would follow the

precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit for purposes of analyzing, under the Equal Protection Clause, public policies that apportion benefits or assistance on the basis of race.

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: The Supreme Court has held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation," and that it therefore protects the right to keep and bear arms for the purpose of self-defense in the home. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 749-50 (2010). However, the Supreme Court has also stated that the right conferred by the Second Amendment is "not unlimited, just as the First Amendment's right of free speech was not." *Heller*, 554 U.S. at 595; *see also Nat'l Rifle Ass'n of Am., Inc. v. McCraw*, 719 F.3d 338, 349 (5th Cir. 2013) (summarizing the textual and historical analysis of *Heller*).

The Fifth Circuit has construed *Heller* as acknowledging that certain restrictions have traditionally been upheld under the Second Amendment. *Nat'l Rifle Ass'n of Am., Inc. v. McCraw*, 719 F.3d 338, 346 (5th Cir. 2013). Accordingly, the Fifth Circuit has set out a two-step inquiry to evaluate whether a firearms regulation comports with the Second Amendment: (1) determining "whether the challenged conduct is even within the scope of the Second Amendment right;" and (2) applying "the appropriate level of means-ends scrutiny … depend[ing] on the nature of the conduct being regulated and the degree to which the challenged law burdens the right." *Id.* at 346 (internal citations omitted).

If I am confirmed, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit for purposes of analyzing the scope of the rights conferred by the Second Amendment.

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 resolving questions of first impression I would begin with the plain language of the text of the statute or authority at issue employing the canons of construction recognized by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit. If the text is clear and unambiguous, then I would apply its plain meaning. If the text is not unambiguous, I would seek guidance from Supreme Court and Fifth Circuit precedent regarding analogous provisions. If I could not find analogous authority from the Supreme Court or Fifth Circuit, I would look to other federal circuit and district courts for guidance.

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: If confirmed, I would follow controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, faithfully applying the doctrines of *stare decisis* and judicial restraint regardless of my personal beliefs.

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

Response: Federal courts should avoid addressing the constitutionality of federal statutes unless the resolution of the case requires the court to reach the constitutional question. Federal statutes are presumed to be constitutional, except where Congress has exceeded its authority under the Constitution in enacting the statute or the statute violates a constitutional provision.

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: I do not believe that rulings of foreign courts and international tribunals should play any role in the interpretation of the United States Constitution and the laws of the United States.

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: Throughout my judicial career as a state trial and appellate judge, and now as a United States magistrate judge, I have authored hundreds of judicial opinions that demonstrate my continued commitment to the doctrines of *stare decisis* and judicial restraint. If I am confirmed, I would continue this commitment and follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit.

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: During my over 14 years of state and federal judicial service, I have always treated litigants fairly under the law and with unfailing respect and courtesy, without regard to any personal views I might hold. My judicial decisions have consistently followed the rules of *stare decisis* and judicial restraint, and followed binding precedent. If I am confirmed, I would continue to do the same.

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

Response: Throughout my judicial career I have managed complex caseloads by ensuring that each matter is tracked with an equal amount of diligence and care. I use the electronic case-management tools available to me, and I periodically review the dockets and deadlines of each case to make sure that the imposed deadlines are prompt but reasonable, and that they are made clear to all parties. Further, I remain available to the litigants for conferences regarding discovery or other matters, and I strive to issue prompt rulings. If I am confirmed, I would continue these practices and I would efficiently utilize court staff and magistrate judges where appropriate.

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, my past experiences have demonstrated to me the crucial role that judges play in maintaining a fair and prompt pace of litigation. In particular, judges should use electronic case-management tools and should review the dockets and deadlines of each matter before them. I also believe it is crucial that judges remain available to litigants for conferences regarding discovery or other matters, and that judges issue prompt rulings. If I am confirmed, I would continue these practices.

12. 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: Throughout my judicial career I have authored hundreds of judicial opinions. In writing each opinion, I begin by making sure that I have a thorough understanding of the facts, the arguments, and the procedural posture of the case. In many situations, I have found oral argument or hearings to be a useful tool. When necessary, I have called for additional or supplemental briefing on a particular issue. After reviewing the record and the arguments, I then carefully track the applicable statutory or legal authorities and survey cases from the applicable jurisdiction to ascertain the binding case law. When I draft an opinion, I seek for it to be clear and cogent, and to be based on the facts contained in the record.

13. 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: I am not aware of the full context of this quotation; however, a judge must always decide cases in a fair and impartial manner while making sure that the court's rulings are clear, concise, and firmly grounded in binding precedent. A judge should do so regardless of any personal views.

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: On January 29, 2015, I received these Questions for the Record from the Office of Legal Policy. I then reviewed the Questions and drafted my answers. I submitted the initial draft of my answers to the Office of Legal Policy for review and then finalized my responses before submitting them to the Committee.

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

Response: Yes.