

**Senator Chuck Grassley
Questions for the Record**

**Amul R. Thapar
Nominee, U.S. Circuit Judge for the Sixth Circuit**

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 to be open-minded and not to prejudge a case without reading the briefs, researching the law, and hearing from the parties. I believe 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 be respectful and fair to their colleagues, counsel, and the parties. I have strived to do this throughout my career on the federal bench.

3. 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 faced with a case of first impression, I would start by analyzing the text of the relevant provision of the Constitution or statute. Next, I would look to analogous decisions of the Supreme Court and the Sixth Circuit. Finally, I would look at whether other circuit courts and/or district courts have grappled with the issue and what they have said and done.

4. On appellate review, should judges restrict themselves to considering facts in the record? Under what circumstances should circuit judges take notice of facts not in the record?

Response: Outside of the narrow category of facts susceptible to judicial notice under Federal Rule of Evidence 201, federal appellate judges are bound by the facts developed in the district court. Judges should not go outside the record.

5. As a judge on an appellate panel, under what circumstances would you see fit to author a dissenting an opinion? Why would you author a dissenting an opinion? Under what circumstances would you author a separate concurring opinion? Why would you author such an opinion?

Response: I will try my best to work with my colleagues to achieve unanimity. I would dissent only if I believed that the law compelled a different result. If I feel compelled to dissent, I will be respectful and understanding in doing so. I would concur only in the rare circumstance where I agree with the court’s result, but cannot agree with the majority’s reasoning or believe some aspect of the legal issues in the case merits further discussion.

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

Response: As the Supreme Court has said, “judging the constitutionality of an Act of Congress is the gravest and most delicate duty that [courts are] called upon to perform.” *Nw. Austin Mun. Utility Dist. No. One v. Holder*, 557 U.S. 193, 204 (2009) (citation and internal quotation marks omitted). Therefore, courts should “invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds.” *United States v. Morrison*, 529 U.S. 598, 607 (2000). Moreover, under the doctrine of constitutional avoidance, a court should not strike down an act of Congress if the statute can be fairly construed to avoid the constitutional concern. *See Clark v. Martinez*, 543 U.S. 371, 381 (2005) (the constitutional avoidance canon “is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts”).

7. Please describe your understanding of the workload of the Sixth Circuit. If confirmed, how do you intend to manage your caseload?

Response: I am not familiar with the specific caseload of the Sixth Circuit, but I expect it to be demanding. As such, I will seek the advice of Sixth Circuit judges as to their procedures and implement any that I believe would help me resolve cases in a timely fashion. As a district court judge, I understand that “justice delayed is justice denied.” Thus, I work diligently to make sure that I consider every issue and render opinions in a timely fashion. I will do the same on the Sixth Circuit.

8. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: Absent an intervening Supreme Court or *en banc* decision, a three-judge panel of the Sixth Circuit is bound by the published decisions of prior panels within the circuit. *Nat’l Union Fire Ins. Co. v. VP Bldgs., Inc.*, 606 F.3d 835, 839–40 (6th Cir. 2010). The Sixth Circuit may overrule its own precedent only when sitting as a full court. *Salmi v. Sec’y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985). Federal Rule of Appellate Procedure 35(a) makes clear that this procedure is disfavored and to be used sparingly. A

case will be heard *en banc* only if (1) it “is necessary to secure or maintain uniformity of the court’s decisions” or (2) the case raises “a question of exceptional importance.” Fed. R. App. P. 35(a).

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: I would point to my record as a district judge. As a district judge, I have based my decisions on precedent and text, not political ideology. I would do the same as a circuit judge. Political ideology and motivations have no place in the judicial decision-making process.

10. 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: Every case starts with the briefs. I read the positions of the parties and the case law they cite. If there are particularly difficult issues, I may ask for oral argument and/or supplemental briefing from the parties. I then craft an opinion that addresses all of the arguments raised. My law clerks assist throughout this process, and we often engage in substantial dialogue about the case. If I am fortunate enough to be confirmed, I would of course consult my colleagues as part of this process.

11. At a speech in 2005, Justice Scalia said, “I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says.”

- a. I understand you may not be familiar with the complete context of this quotation, but do you agree with this statement?

Response: While I am not familiar with the statement, I do agree that judges should follow the Constitution, regardless of their personal views.

- b. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?

Response: No.

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

Response: I received the questions on the evening of May 3, 2017. I reviewed the questions, conducted research, and drafted answers. I then shared the answers with the Office of Legal Policy in the Department of Justice. After speaking with them, I made revisions and then authorized the submission of my responses.

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

Response: Yes.