

**Senator Chuck Grassley
Questions for the Record**

**Linda Vivienne Parker
Nominee, U.S. District Judge for the Eastern District of Michigan**

- 1. You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for some of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the following talks?**

- a. April 30, 2013: Speaker, “Public Defense Reform: The Impact on the School to Prison Pipeline”**

Response: Respectfully, please note that as indicated in my questionnaire, the referenced remarks were provided in the year 2010, not 2013. While I am unable to recall the points that I covered with specific detail, I do know that I underscored the importance of completing a high school education, noting that many individuals who have had consistent contacts with the criminal justice system have not completed high school.

- i. In addition to a more detailed description of this talk, can you also elaborate on “the need for enhance funding for public defense?”**

Response: My recollection is that at the time I gave the speech, there had been a significant amount of state and national research which generated discussion in Michigan regarding the necessity of increased funding for indigent or public defense systems operating in Michigan. My remarks acknowledged the importance of this research.

- b. April 21, 2009: Panel Moderator: “Leading Economic Transformation with Diversity”**

Response: I was asked to moderate a discussion among university and business leaders about their perspective on the role of diversity in Michigan’s economy. I am unable to recall the specifics of my brief remarks as the moderator but I likely introduced the panelists.

- 2. In 2004 you stated that “fair housing must be recognized as a human right.” Can you please explain further what you meant by this statement and any legal arguments you believe to back up this assertion?**

Response: At the time that I made the referenced statement I was the director of the Michigan Department of Civil Rights. As an advocate for the Department, the referenced

statement reflected our work and recognition that where a person lives can determine the quality of basic services to which they have access and in turn have an impact on the quality of their life. In retrospect, I should have been more precise in my language, as there is no legal argument of which I am aware that I believe supports the assertion that fair housing must be recognized as a human right. As I stated in my hearing, I would not seek to find a new constitutional right in this area.

- 3. 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?**

Response: No. There are no circumstances under which it is ever the role of a judge to favor one party over the other.

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

Response: The most important attributes of a judge are to honor the rule of law, to apply the applicable law to the facts of each case without bias or preconception, and to hold a deep and abiding respect for the unique and limited role of the judiciary. I believe that I possess these attributes and have demonstrated them throughout my service as a state trial court judge.

- 5. 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: I believe that the appropriate temperament for a judge is characterized by a continuous display of respect for all participants in the judicial process, open-mindedness, impartiality, and humility. I believe that I meet this standard and have applied it in my years as a trial court judge.

- 6. 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: Faithful application of Supreme Court and Circuit Court precedents is the highest duty of a federal court judge. By giving full force and effect to these precedents, both the litigants and the public at large are assured equal treatment and justice under the law. If confirmed, I will continue to adhere to these legal tenets irrespective of any personal views or opinions to the extent that I have any.

7. **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 apply the canons of statutory construction. First, I would look to the plain language of the provision in question. Only if the provision was ambiguous would I go further in the analysis. If the provision was ambiguous, I would examine precedent from the Supreme Court and the Sixth Circuit. If those courts did not provide any guidance I would then turn to other Circuit and District Courts addressing analogous provisions for persuasive, but not binding, authority.

8. **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: Whether or not I believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision, I would honor the rule of law and faithfully apply the controlling precedent of the Supreme Court and the Sixth Circuit as required by the doctrine of *stare decisis*.

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

Response: A statute enacted by Congress is presumed to be constitutional. It is only appropriate to declare a statute enacted by Congress unconstitutional under one of the following two scenarios: 1) where Congress has clearly exceeded its authority; or 2) where the enacted statute violates a constitutional provision based upon clear precedent established by the appellate courts.

10. **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. Neither foreign law nor the views of the “world community” are proper sources upon which a judge should rely for purposes of determining the meaning of the Constitution.

11. **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 judge for nearly five years, my decisions have remained grounded in precedent and the text of the law rather than any underlying political ideology or motivation. During my service as a judge, I have only been overturned twice. I have consistently adhered to the rule of law and have been committed to the faithful application

of applicable precedent. There is no place for political ideology or motivation in rendering judicial decisions.

- 12. 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: As a trial court judge, I have faithfully applied controlling appellate precedent to each case before me and have acted consistently upon my commitment to treat each party with respect. Through adherence to the rule of law and by being respectful to all, I will continue to demonstrate to all who come before me that they will be accorded equal treatment under the law.

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

Response: If confirmed, I intend to utilize pretrial and status conferences where firm and reasonable deadlines will be established, issue rulings in a timely manner, and make myself accessible to attorneys. Further, I intend to confer with other judges of the district to learn and borrow their best practices regarding case management so that I can be fully successful in managing my caseload.

- 14. 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: In my present role as a trial court judge, I deeply believe that judges have an important role in controlling the pace and conduct of litigation. If confirmed as a federal district judge, I would continue to be very clear regarding my expectations in terms of timelines. Further, I would ensure that I remain accessible to attorneys so that unexpected occurrences can be promptly addressed.

- 15. 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: In reaching a decision in cases that come before me, I first begin with a respectful reading of the positions of each side. If an oral argument has been made, I rely upon my copious notes and review the transcript of the proceeding. Thereafter, I thoroughly research the issues, identify the applicable appellate law and apply it to the facts of the case.

- 16. 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.

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

Response: I reviewed the questions upon receipt and reflected upon each of the questions. Thereafter, I drafted a response to each of the questions, discussed them with representatives of the Department of Justice, put them in final form and authorized submission to the Committee.

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

Response: Yes.

Senator Ted Cruz
Questions for the Record

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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: My judicial philosophy as a state court judge for nearly five years could best be characterized by faithfully upholding the rule of law by the application of controlling appellate precedent to the facts of the cases before me. If confirmed, I will continue to adhere to this most sacred principle and decide each case with impartiality, issue thoughtful decisions promptly and treat all parties that appear before me with respect. I have not studied Supreme Court history with an eye toward the judicial philosophies of the Justices, so I cannot analogize my beliefs to those of any one Justice.

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 Supreme Court has used “original intent” and “original public meaning” when interpreting the Constitution in certain cases. I would faithfully follow that precedent.

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 confirmed as a district court judge, there would be no circumstances under which I would overrule precedent. I would faithfully follow applicable controlling 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: If confirmed, to the extent that *Garcia* is controlling precedent, I would follow it and all other controlling precedent in any case before me.

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, in *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), identified three general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of channels of interstate commerce, (2) instrumentalities of interstate commerce and persons or things in interstate commerce, and (3) activities that substantially

affect interstate commerce. In *United States v. Lopez, supra*, and *United States v. Morrison*, 529 U.S. 598 (2000) the Supreme Court has also articulated limitations to the reach of the Commerce Clause to certain non-economic activities. If confirmed as a district court judge and presented with a challenge to the constitutionality of a statute on the grounds that it impermissibly extended to non-economic activity, I would apply controlling precedent in making my ruling.

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

Response: The power of the President to issue executive orders or executive actions “must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet and Tube v. Sawyer*, 343 U.S. 579, 586 (1952).

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

Response: The Supreme Court has stated that the “Due Process Clause specially protects 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 (1997) (citations omitted). If confirmed, I would apply the precedent of the Supreme Court and the Sixth Circuit Court of Appeals.

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

Response: The Supreme Court has ruled that “equal protection analysis requires strict scrutiny of a legislative classification when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class.” *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). See also *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985) (noting that strict scrutiny applies to classifications based on “race, alienage or national origin” or when “laws impinge on personal rights protected by the Constitution”; otherwise “heightened” review applies to classifications based on gender and illegitimacy).

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: For nearly five years as a state court judge, any personal expectations or beliefs I might have with respect to the issues before me have been irrelevant to my judicial decisions. If I were confirmed as a federal district court judge, that will continue to be true. I will apply the controlling precedents of the Supreme Court and Sixth Circuit Court of Appeals in all areas of the law, including *Grutter* and *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).