Responses of Paul William Grimm
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Chuck Grassley

1. **In *Victor Stanley v. Creative Pipe,* you imposed sanctions on the defendant for repeatedly delaying production, deleting and destroying evidence, and misrepresenting discovery production to opposing counsel. Understandably, you entered a default judgment and imposed attorney fees and costs against the offending party. However, you went a step further ordering the defendant "be imprisoned for a period not to exceed two years, unless and until he pays to Plaintiff the attorney's fees and costs." The district court generally accepted your report and recommendation, but rejected the prison sentence saying, "I do not think that's the way to proceed." In hindsight, do you believe you exercised proper judicial temperament in this case? Please explain why or why not.**

   Response: I do believe that I exercised proper judicial temperament in the *Victor Stanley v. Creative Pipe* case, in light of the extraordinary facts and circumstances of the case, by recommending a sanction of civil contempt that included imprisonment not to exceed two years, unless and until the defendant paid the plaintiff's fees and costs. I supplemented my report and recommendation with an order that the prison sentence would not be imposed if the defendant demonstrated that he lacked the funds to pay the plaintiff's fees and costs. This recommended sanction was made following a finding by clear and convincing evidence that the defendant committed civil contempt of court by violating orders of the court that he preserve and produce evidence, and that he did so willfully to thwart the court's orders, resulting in prejudice to the plaintiff's ability to prove its case. The Federal Rules of Civil Procedure specifically authorize a court to treat as a contempt of court the failure to obey a prior court order. I recognize that imprisonment is an unusual sanction for contempt of court and that it should be reserved for extraordinary circumstances. In the *Victory Stanley* case, however, I believe that such a sanction was appropriate—and reflected proper judicial temperament—because it was necessary to ensure that the defendant complied with the court order to pay the plaintiff's fees and costs. I respect the District Court's decision not to adopt that portion of my recommendation.

2. **In *Kennedy v. Villa St. Catherine's* the case rested on the scope of the exemption afforded religious organizations in the "employment of individuals" under Title VII of the Civil Rights Act. In interpreting the statutes meaning, you cited the need to start with the statutes plain language, but immediately declared the statues meaning was "unclear." You then embarked on analysis of legislative history. You held that the law provided a narrow religious exemption that applied only to "employment decisions" -- namely the hiring and firing of individuals. The appellate court disagreed with your analysis saying your "narrow reading of employment is simply incompatible with the actual language" of the statute.**

a. I am concerned about the cursory review you appeared to give text of the statute in this case. What is your view on the proper approach for interpreting constitutional and statutory text?

Response: The proper approach for a United States District Judge to follow in interpreting constitutional and statutory text is to apply binding Supreme Court and Circuit Court authority regarding the meaning of the text. If there is no such binding authority, then the court should carefully review the text of the constitutional or statutory provision itself, and if the meaning is clear, enforce it as written. If this does not resolve the issue, the court should look to decisions from other Circuit Courts or District Courts interpreting the constitutional provision or statute for guidance. If none exist, then the court should consider clearly discernible expressions of legislative intent, if permitted to do so by governing Supreme Court and binding Circuit Court authority regarding proper statutory construction. If confirmed as a United States District Judge, I would employ this method of interpreting constitutional or statutory text.

b. Do you agree that in interpreting a statute one must look at the "statute as a whole" and not interpret a phrase in "isolation?" What approach did you take in the *Kennedy* case?

Response: I agree that in interpreting a statute one must look at the statute as a whole and not interpret a phrase in isolation, and if confirmed as a United States District Judge, I will follow this approach. In the *Kennedy* case, I endeavored to interpret the statute as a whole, but found that the statute alone did not resolve the very specific issue of first impression presented in the case. Because at that time there were no Supreme Court, Circuit Court, or District Court cases addressing the specific issue presented, I endeavored to resolve the issue by examining the legislative history of the statute, as explained by Fourth Circuit and other case law. In addition, in accordance with Supreme Court precedent regarding the proper method of statutory construction, I considered the administrative interpretation of the statute by the EEOC, the agency charged by Congress with enforcing the act. If confirmed as a United States District Judge and called upon to resolve a case presenting similar issues as in *Kennedy*, I would follow the Fourth Circuit's interpretation of the statute as stated in *Kennedy v. St. Joseph's Ministries, Inc.*, 657 F.3d 189 (4th Cir. 2011).

c. What do you see as the role of legislative history in interpreting a statute?

Response: In interpreting a statute, the court should look to binding Supreme Court and Circuit Court authority. If there is no applicable Supreme Court or Circuit Court authority, the court should look to the text of the statute itself, taken as a whole. If this does not resolve the issue, the court should look to non-binding decisions from other Circuit and District Courts for guidance. If this does not resolve the issue, the court may then consider the legislative history of

the statute, if permitted to do so by Supreme Court or Circuit Court authority regarding appropriate methods of statutory construction.

3. In *Kennedy v. Villa St. Catherine's*, your narrow construction of the religious exemption in Title VII makes me wonder if you may similarly read other statutory and constitutional protections afforded to religious organizations and individuals narrowly.

a. Do you believe that ministers and other clergy should be treated as any other leader of an organization?

Response: I have not comprehensively researched the issue of when the Constitution and other federal law require ministers and other clergy to be treated the same as any other leader of an organization, and therefore have not formed an opinion on the topic. If confirmed as a United States District Judge and called upon to consider this issue, I would apply applicable Supreme Court and Fourth Circuit precedent to the facts of the case. If the issue involved application of the ministerial exception to Title VII of the Civil Rights Act of 1964 in employment discrimination cases, I would apply the Supreme Court's unanimous decision in *Hosanna-Tabor Church v. EEOC*, 132 S. Ct. 694 (2012), as more fully described in my answer to Question 3.b, below.

b. What is your understanding of the scope of the "ministerial exemption" given the Supreme Court's unanimous decision in *Hosanna-Tabor Church v. Equal Employment Opportunity Commission*?

Response: In *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132 S. Ct. 694 (2012), the Supreme Court held that there is a ministerial exception to Title VII of the Civil Rights Act of 1964 "that precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers." *Id.* at 705. The Court also held that the exception applied to the individual at issue—a "called" teacher, regarded by the religious organization "as having been called to [her] vocation by God through a congregation." *Id.* at 699–700, 707–09. In so holding, the Supreme Court made clear that the exception "is not limited to the head of a religious congregation." *Id.* at 707. The Court noted that it was "reluctant, however, to adopt a rigid formula for deciding when an employee qualifies as a minister" for purposes of the exception. *Id.* at 707. Thus, in *Hosanna-Tabor*, the Supreme Court did not undertake to exhaustively describe the full scope of the ministerial exception, nor did it specifically limit application of that exception. If confirmed as a United States District Judge and required to determine the scope of the ministerial exception, I would carefully consider and follow *Hosanna-Tabor*, any other applicable Supreme Court precedent, and applicable Fourth Circuit precedent.

4. This administration has shown a disregard for the rights of religious liberty and exercise of conscience protected by the First Amendment.

a. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?

Response: I have not undertaken a comprehensive study of the current state of the law with regard to the interplay between the establishment and free exercise clauses of the First Amendment. If confirmed as a United States District Judge and required to consider this relationship, I would apply binding Supreme Court and Fourth Circuit authority interpreting the relevant constitutional provisions. If there is no applicable Supreme Court or Fourth Circuit authority, I would carefully consider the text of the relevant constitutional provisions. If this does not resolve the issue, I would consider decisions from other Circuit Courts or District Courts that have interpreted the constitutional provision for guidance.

b. What is your understanding of the heighted protections afforded by the Religious Freedom Restoration Act?

Response: I have not undertaken a comprehensive study of the Religious Freedom Restoration Act. However, the stated purpose of the Act, 42 U.S.C. § 2000bb, is "to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened." Under that test, the Government is required to demonstrate a compelling state interest in order to justify placing a burden on an individual's constitutional right of free exercise of religion. This test applies to any action by the federal government that substantially burdens the free exercise of religion. If confirmed as a United States District Judge and required to consider the heightened protections afforded by the Religious Freedom Restoration Act, I would carefully consider and apply the plain text of the statute and all applicable Supreme Court and Fourth Circuit precedent.

c. How would you approach a case where First Amendment religion rights were at issue?

Response: If confirmed as a United States District Judge and presented with a case where First Amendment religion rights were at issue, I would follow binding Supreme Court and Fourth Circuit authority. If there is no applicable Supreme Court or Fourth Circuit authority, I would carefully consider the text of the First Amendment. If this did not resolve the issue, I would consider decisions from other Circuit Courts or District Courts for guidance.

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

Response: The most important attribute of a judge is personal and judicial integrity. Such integrity requires fairness, humility, and hard work. I possess these qualities and have practiced them for fifteen years as a United States Magistrate Judge.

6. 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 display a dignified, respectful, patient, and even-handed temperament. It is important to display all these elements of temperament to ensure that all parties feel that they have been fairly and impartially treated. I have displayed these characteristics throughout my time as a United States Magistrate Judge.

7. 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. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

8. 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 first would review the plain language of the provision of the Constitution or law at issue. If this did not resolve the issue, I would look to Supreme Court and Fourth Circuit precedent involving similar or analogous issues. I also would consider the decisions of other Circuit Courts and District Courts for guidance. If necessary, I would consider the clearly articulated or ascertainable legislative intent of the constitutional provision or statute, if permitted to do so by Supreme Court and Fourth Circuit authority regarding proper statutory construction.

9. 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 as a United States District Judge, I would faithfully apply Supreme Court and Fourth Circuit precedent and would fully apply these decisions regardless of my views about how they were rendered.

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

Response: It is only appropriate for a federal trial court to declare a statute enacted by Congress unconstitutional if the statute violates a provision of the Constitution or, if by enacting the statute, Congress has exceeded its constitutional authority.

11. 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?

Response: Because the United States Constitution is a uniquely American document, I do not believe that it is ever proper for judges to rely on foreign or international law, or the views of the "world community," in interpreting the Constitution, unless expressly required to do so by controlling Supreme Court precedent, and then, only to the extent required by that precedent.

12. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: As a United States Magistrate Judge for more than fifteen years, I have managed my caseload efficiently by actively supervising the pretrial process, setting firm scheduling deadlines, and promptly ruling on all motions. If confirmed, I would continue this approach.

13. 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: Judges play a vital role in controlling the pace and conduct of litigation. In addition to the steps I outlined in my response to Question 12, I would hold early pretrial conferences with counsel to set a reasonable schedule, implement procedures to expedite discovery, refer cases for settlement conferences when appropriate, promptly dispose of pretrial dispositive motions, and set a firm trial date for all cases that require trial.

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

Response: I received these questions on May 16, 2012, and promptly prepared responses, which I forwarded to the Department of Justice on May 17, 2012. I spoke by telephone to a representative of the Department of Justice about finalizing my answers on May 18, 2012 and May 21, 2012, and thereafter authorized the representative to submit my responses to the Senate Judiciary Committee.

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

Response: Yes.

Responses of Paul William Grimm
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy is that a trial judge must have personal and judicial integrity; display impartiality and fairness, humility, professionalism, and courtesy toward lawyers and parties; and have a willingness to work hard and efficiently. A judge demonstrates these attributes by carefully managing his or her docket, expeditiously ruling on motions, and deciding all cases impartially based on the established facts and controlling law. A judge's role in our constitutional system is a limited one. It is to find the facts impartially and expeditiously and to apply the existing law faithfully, as established by the Supreme Court and applicable Circuit Court authority, while focusing solely on the issues properly before the court.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: As I have done for more than fifteen years as a United States Magistrate Judge, I can provide my absolute assurance that in the courtroom and in my written orders resolving matters without trial, all parties will be treated fairly, regardless of political affiliation, economic status, or belief, and without regard to whether they are a plaintiff or defendant.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: Judges should adhere strictly to the doctrine of stare decisis, which is a bedrock of our judicial system. The doctrine ensures that cases are decided consistent with established law and guards against arbitrary decisions. Adherence to the doctrine of stare decisis is one important means by which judges properly perform their limited role in our constitutional system. It also promotes public perception that our judicial system is impartial because cases with similar facts have similar outcomes. All District and Circuit Courts are bound to adhere to principles of stare decisis.

Responses of Paul William Grimm
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

   a. **If not, please explain.**

      Response: The only way that the Constitution may be changed is through the amendment process, which is laid out by the document itself.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: No.

   a. **Please explain.**

      Response: If confirmed as a United States District Judge, my approach to constitutional interpretation would be to first apply binding Supreme Court and Fourth Circuit precedent. If there is no applicable Supreme Court or Fourth Circuit authority, I would consider the text of the Constitution itself. If this did not resolve the issue, I would look to decisions from other Circuit Courts and District Courts interpreting the constitutional provision for guidance.

3. **In Federalist Paper 45, James Madison wrote: "The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and infinite." Do you agree with Madison that the powers of the Congress are fundamentally limited?**

   Response: Yes. The powers of Congress are explicitly enumerated in Article I of the Constitution. The Tenth Amendment states that all "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

4. **In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

   Response: Because the United States Constitution is a uniquely American document, I do not believe that it is ever proper for judges to rely on foreign or international law in

interpreting the Constitution, unless expressly required to do so by controlling Supreme Court precedent, and only to the extent required by that precedent.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Please see my response to Question 4.