

**Senator Chuck Grassley
Questions for the Record**

**James D. Peterson
Nominee, U.S. District Judge for the Western District of Wisconsin**

- 1. You wrote in the February 2010 newsletter for the Western District of Wisconsin Bar Association that, “For nearly every plaintiff that is drawn to the Western District of Wisconsin, there is a defendant who would prefer to litigate somewhere else.” Please explain what you meant by this statement.**

Response: I wrote that statement in an article to provide guidance to litigants on motions to transfer venue filed in the Western District of Wisconsin. The statement reflects that the plaintiff’s choice of venue is often perceived as providing a tactical advantage. Thus, many defendants, when possible, try to challenge the plaintiff’s choice by filing a motion to transfer the case to a venue of the defendant’s choosing. I was not suggesting that the Western District of Wisconsin had any pro-plaintiff bias, and I have observed no such bias in my experience with the court.

- 2. During your hearing I asked you about your work with the Freedom From Religion Foundation. You said your law firm has worked on both sides of religious liberty issues. Have you personally worked on any cases that defended the religious side of religious liberty? If so, please describe your involvement in them.**

Response: At the hearing, I testified that my firm has a long history of advocating the First Amendment interests of clients across the political spectrum. To cite one recent and notable example of my firm’s defense of the free exercise of religious liberty, my colleagues represent Archbishop Jerome E. ListECKi, as Trustee of the Archdiocese of Milwaukee Catholic Cemetery Perpetual Care Trust, in an appeal of a bankruptcy court decision. Our firm successfully argued that the bankruptcy decision infringed the Trust’s rights under the Religious Freedom Restoration Act and the Free Exercise Clause of the First Amendment. Although I have not been counsel of record in Free Exercise Clause cases, I have advised my colleagues on litigation strategy in such cases.

Religious liberty is a fundamental right of every citizen. If confirmed, I will treat the religious convictions of anyone who appears before me with respect, and faithfully follow Supreme Court and Seventh Circuit precedent in deciding First Amendment cases.

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

Response: A good judge must have many qualities. But the single most important attribute of a judge is to be fair, setting aside any personal interest or bias, to decide cases strictly on the admissible evidence and the governing law. I have this attribute.

- 4. 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 judge should be even-tempered, patient, thoughtful, and decisive. The temperament of the judge should be one that leaves even the losing party with the conviction that he or she has been fully and fairly heard. I have demonstrated this temperament both in my personal life and in my career.

5. **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 will be absolutely committed to following binding precedent regardless of any personal opinion.

6. **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 matter of first impression, I would apply established principles of legal analysis. If the matter involved statutory interpretation, I would begin with the text of the law, which in most cases is decisive as the best expression of legislative intent. I would turn next to judicial constructions of related laws, then to other recognized sources of authority, aiming at all times to effectuate the legislative purpose.

7. **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 always follow Supreme Court and Court of Appeals precedent regardless of any personal opinion.

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

Response: All validly enacted statutes carry a presumption of constitutionality. A federal court should declare a statute unconstitutional only when that decision is necessary to decide the case and it is clear that the statute exceeds Congress' constitutional authority or that it violates a constitutional right.

9. **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. In matters of constitutional interpretation, a district judge should consider only those sources authorized by Supreme Court or Circuit Court precedent.

- 10. 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: In my practice, I have represented clients with diverse interests and political perspectives and I have never declined to undertake a representation because of the client's political ideology or motivation. If confirmed, I will decide cases based on precedent and the law, and never to serve some political ideology or motivation.

- 11. 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: If confirmed, I pledge to put aside my personal views, treat every party as equal under the law, and decide cases impartially on the law and the evidence, as reflected in the oath of office, which I will take without reservation.

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

Response: If confirmed, I expect to follow many of the case-management practices of my predecessor, the late Honorable John C. Shabaz. I will set early and firm trial dates, see that discovery disputes are decided expeditiously, and I will give full consideration to dispositive motions and decide them promptly.

- 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: Yes. In consultation with counsel for the litigants, I would set the quickest reasonable litigation schedule and a firm trial date. This approach requires diligence from both counsel and the court, but I believe that it is the best way to secure the just, speedy, and inexpensive determination of matters.

- 14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: I began my law career as a judicial clerk to a judge that I admire, an experience that prepared me well for a career as a litigator. If confirmed, I will draw on that experience again as I make the transition to the bench. In deciding cases, I will begin with a careful review of the submissions of counsel, and a careful evaluation of the evidence submitted. I will test the arguments of counsel by verifying the authorities they cite, and I will conduct my own review of the primary law and legal research. The role of judge will present many new challenges, but I expect that developing expertise in criminal law and procedure to be the most challenging aspect of the transition. I am confident that I can handle this challenge through hard work, careful study, and with the mentoring and assistance of my future colleagues at the court.

15. 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.

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

Response: I received a copy of the questions from an attorney in the Office of Legal Policy of the Department of Justice. I drafted responses, submitted them to the same attorney for review, and submitted them in final form.

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

Response: Yes.