

Response of Edward G. Smith
Nominee to be United States District Judge for the Eastern District of Pennsylvania
to the Written Questions of Senator Chuck Grassley

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

Response: The most important attribute of a judge is an unwavering commitment to the rule of law while fairly, objectively, and impartially deciding cases. 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: A trial judge must be patient, respectful, and courteous to everyone that appears before the court. Also, a judge's demeanor should reflect that the judge is thoughtful, impartial, and diligent. I believe that I have demonstrated this temperament throughout my twelve years as a trial judge.

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: I am committed to faithfully following and giving full force and effect to the precedent of the United States Supreme Court and the Third Circuit Court of Appeals, even if I personally disagreed with such precedent. As a state trial judge in Pennsylvania, I have consistently followed the precedent of the United States Supreme Court, the Supreme Court of Pennsylvania, and Pennsylvania's intermediate appellate courts in resolving the issues that have come before me.

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: If faced with a case of first impression, I would first review any potentially analogous decisions by the Supreme Court of the United States or the Third Circuit Court of Appeals. Although I understand that the decisions would only serve as persuasive authority, I would also review and consider any applicable decisions by the other circuit courts or district courts. If the case of first impression involves the interpretation of a statute, code, or regulation, I would examine the text of the law in question, and employ recognized methods of statutory interpretation.

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: Even if I believed that the United States Supreme Court or the Third Circuit Court of Appeals seriously erred in rendering a decision, I would follow the precedent established by that decision. As a trial judge, I will follow existing precedent until or unless that precedent is changed by an appellate court.

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

Response: Any statute enacted by Congress is presumed to be constitutional. There are rare circumstances when a judge is called upon to determine whether Congress has exceeded its authority under the Constitution with respect to particular legislation. Only if a statute is clearly not in conformance with the Constitution as interpreted by the United States Supreme Court or the Circuit Court of Appeals, should a district court judge declare a particular statute unconstitutional.

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: No, it is never proper for judges to rely on foreign law, or the views of the “world community”, in interpreting the meaning of the Constitution.

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: It is never appropriate for a judge’s decision to be influenced by political ideology or motivation. I am committed to following the rule of law, which demands strict adherence to the principles of *stare decisis*. With respect to evidence, my twelve-year record as a trial judge in Pennsylvania demonstrates that I have consistently followed the precedent of the United States Supreme Court, the Supreme Court of Pennsylvania, the Superior Court of Pennsylvania, and the Commonwealth Court of Pennsylvania in rendering my decisions.

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 twelve years as a Pennsylvania state trial court judge, I have never allowed my personal views to affect my ability to be fair and impartial to everyone that has come before the court.

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

Response: If confirmed as a federal district judge, I would ensure that an efficient process was established to resolve cases on my docket. In particular, I would take an active role in tracking all cases assigned to me. I would set up a process by which any assigned cases are initially reviewed for a determination of whether they are properly filed in federal court. I would then actively monitor my cases, promptly reviewing and scheduling any motions for argument or hearing, and disposing of those motions in a timely fashion. I would also ensure that I effectively work with the United States Magistrate Judges in my district to ensure that cases are efficiently and expeditiously proceeding to settlement or trial.

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, I believe that judges have an important role in controlling the pace and conduct of litigation. If confirmed, I would regularly monitor the cases on my docket. I would also establish firm and fair deadlines for any case management orders, promptly resolve any motions or discovery issues, and entertain and encourage settlement discussions as early as practicable in the litigation.

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: As a judge, I first have to establish the factual record on which I am to decide a particular issue. Once that record is established, I must determine the law that is applicable to the facts at issue. I will often provide the parties the opportunity to supply written submissions, and I will review those submissions and analyze the cases cited by the parties. I will also consider any oral arguments presented by the parties. I then conduct my analysis of the cases cited and my own review of the applicable law and draft a decision in accordance with the appellate precedent applicable to the particular issue in the case.

13. 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, I have not had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with the AAJ regarding my nomination.

- 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, I am unaware 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 my nomination.

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

Response: I received these questions via email on November 13, 2013. I drafted responses and forwarded them to the Department of Justice on November 14, 2013. I discussed responses with a representative of the Department of Justice and authorized the Department of Justice to submit my responses to the United States Senate.

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

Response: Yes.