

**Senator Grassley
Questions for the Record**

**Leonard Terry Strand
Nominee, U.S. District Judge for the Northern District of Iowa**

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

Response: The most important attribute of a judge is integrity. Other attributes have little or no value if the judge lacks integrity. I believe I possess integrity.

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: I believe a judge should be humble, thoughtful, even-tempered, patient and respectful. I believe I possess those qualities and have demonstrated them during my tenure as a magistrate 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: Absolutely. I am committed to following binding precedent without regard to my own personal views.

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: In deciding cases of first impression, I will follow the analysis that has been adopted by the Eighth Circuit Court of Appeals. When interpreting a statute, a court must start with the statute's text, giving the words chosen by the legislative branch their ordinary, common meaning. *United States v. Goad*, 788 F.3d 873, 875 (8th Cir. 2015). If the statutory text is unambiguous, the court must apply the text as written. If the statutory language is ambiguous, the court may look to non-controlling precedent, such as the holdings of other courts that have considered the statute at issue (or analogous statutes). The court may also consider legislative history and apply rules of statutory construction to determine legislative intent. *Owner-Operator Independent Drivers Ass'n v. Supervalu, Inc.*, 651 F.3d 857, 863-64 (8th Cir. 2011). Ultimately, the task must be to construe the law accurately without regard to my own personal opinions and beliefs.

- 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: I will apply binding precedent without regard to my personal beliefs. When the applicable law has already been established by the Supreme Court or the Eighth Circuit Court of Appeals, it would not be appropriate for me to substitute my own judgment for binding precedent.

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

Response: Out of respect for the separation of powers, a federal court should not address the constitutionality of a statute unless doing so is necessary to the disposition of the case. When that situation arises, I would follow binding precedent and would declare a statute unconstitutional only when it is clear that the statute is contrary to the text of the Constitution. *See, e.g., United States v. Lopez*, 514 U.S. 549, 566 (1995).

- 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: It is my opinion that foreign law and the opinions of the “world community” are irrelevant to judicial interpretation and application of the provisions of the United States Constitution. However, I would follow binding precedent regardless of whether the holding of that binding precedent was reached by reference to such sources.

- 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: As a magistrate judge, I have already taken an oath to (among other things) “faithfully and impartially discharge and perform all the duties incumbent upon” me as a federal judge. Over more than three years of service, I believe that I have demonstrated my commitment to my oath. If I am fortunate enough to be confirmed as a district court judge, I will continue to do so.

- 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: As indicated in my previous answer, I believe that my service as a magistrate judge reflects my commitment to be fair to all who appear before me, regardless of my personal views or beliefs.

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

Response: As a magistrate judge, I have first-hand experience managing the heavy caseload faced by the judges of the Northern District of Iowa. If confirmed as a district judge, I will continue to work very hard, in coordination with my staff, to manage my docket effectively and efficiently. This will include establishing and enforcing scheduling orders that prevent undue delay.

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: My view, based on my experience as a trial lawyer, is that good lawyers often are able to work together to manage the pace and conduct of litigation without substantial judicial intervention. However, I also have a firm belief that the presiding judge has a duty to intervene when necessary to prevent unnecessary delay and expense. I will make my expectations clear and will intercede as needed to keep cases moving forward in an efficient and effective manner.

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: Each decision I make results from applying the applicable law to the facts that are properly of record. In determining the applicable law, I consider binding precedent and any applicable statutes or regulations. In writing opinions, my goal is to explain my decisions in a concise and organized manner for the benefit of the parties and any reviewing court.

13. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?

Response: I am not familiar with this quotation and thus do not know its context or intent. Regardless, I firmly believe that judicial decisions must be based on the applicable law and the facts of record, not on the judge’s personal politics or beliefs.

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

Response: On October 28, 2015, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally drafted my answers and submitted them to the Office of Legal Policy on October 29, 2015. After discussing the answers by

telephone with an attorney at the Office of Legal Policy, I authorized their submission to the Committee on October 30, 2015.

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

Response: Yes.

Leonard Terry Strand
Nominee, U.S. District Judge for the Northern District of Iowa

Written Questions of Senator Jeff Flake
U.S. Senate Committee on the Judiciary
Judicial Nominations
October 27, 2015

1. What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?

Response: My approach is to adopt the analysis applied by the Eighth Circuit Court of Appeals. When interpreting a statute, a court must start with the statute's text, giving the words chosen by the legislative branch their ordinary, common meaning. *United States v. Goad*, 788 F.3d 873, 875 (8th Cir. 2015). If the statutory text is unambiguous, the court must apply the text as written. In that situation, it is not appropriate to use legislative history to change the statute's unambiguous meaning. If the statutory language is ambiguous, the court may look to non-controlling precedent, such as the holdings of other courts that have considered the statute at issue (or analogous statutes). The court may also consider legislative history and apply rules of statutory construction to determine legislative intent. *Owner-Operator Independent Drivers Ass'n v. Supervalu, Inc.*, 651 F.3d 857, 863-64 (8th Cir. 2011).

2. What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?

Response: The Tenth Amendment provides that "[t]he 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." The Supreme Court has explained that this means the federal government "can exercise only the powers granted to it." *Bond v. United States*, 134 S. Ct. 2077, 2086 (2014) (quoting *McCulloch v. Maryland*, 4 Wheat. 316, 405 (1819)). Moreover, the Tenth Amendment limits the federal government's authority to compel states to enforce federal regulatory schemes. *New York v. United States*, 505 U.S. 144, 175-77 (1992). If a litigant challenges federal action on grounds that it exceeds the powers delegated to the federal government, a judge should follow binding precedent to determine whether the action is within the scope of the claimed source of authority. For example, if the federal government contends that a statute is within the scope of the Commerce Clause, the court must apply binding precedent concerning the limits of that clause.

3. Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?

Response: Article III, Section 2 of the Constitution imposes a “case or controversy” limit on the judicial branch. The Supreme Court has held that this requires a litigant to show that he or she has suffered an actual injury that is fairly traceable to the challenged conduct and is likely to be redressed by a favorable judicial decision. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The Court has noted that the standing doctrine “serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1146 (2013). I understand that there are arguments for and against relaxing the current federal standing doctrine. Litigants who cannot satisfy the standing requirements may be disappointed and frustrated by their lack of access to the federal courts. However, weakening the current requirements may substantially increase the already-heavy caseload of those federal courts while giving rise to a risk that federal courts will be asked to issue advisory opinions in cases that involve no actual injury. Ultimately, my own views about the current standing doctrine are not relevant. As a federal judge, I must enforce that doctrine in accordance with binding precedent.