

**Kashi Way**  
**Nominee to Serve as Judge on the United States Tax Court**  
**Responses to Questions for the Record**

**Senator Cortez Masto**

**Question 1**

**Background:** If confirmed as a Judge to the United States Tax Court, you will be responsible for interpreting how our tax laws apply to a wide variety of plaintiffs – everything from multinational corporations with large legal teams to small businesses and individuals who appear before court without counsel.

**Question:** *What role would you give to legislative intent, conference report language, or statements from Members of Congress as you interpret and apply regulations affecting tax law?*

**Answer:** **If confirmed, I would apply any binding precedent and rely on well-established tools of statutory interpretation—starting with the plain text of the law—in determining the meaning of a statute. Legislative history, including conference report language and statements from Members of Congress, may be considered and can be useful where the meaning of the statutory text and any judicial precedent and binding administrative guidance is ambiguous, but cannot override a plain reading of a clear statute.**

**Senator Crapo**

**Question 1**

In Fiscal Year 2023, there were around 22,000 cases filed and 31,500 closed at the Tax Court. That was the second-least amount of cases filed in the last seven years and the second-most cases closed in the same time span.

*If confirmed, how will you prioritize providing fair and impartial decisions while also managing your caseload efficiently?*

**Answer:** **If confirmed, I will work hard to provide fair and impartial decisions in a timely manner. Every case is different, and each petitioner deserves to have their case thoughtfully considered. If confirmed, I will strive to do that without any unnecessary delays.**

**Question 2**

The IRS Office of Chief Counsel is responsible for representing the government in matters before the Tax Court, and is thereby involved in every dispute before the court. Some stakeholders have expressed concern that this close relationship may lead to unjust outcomes.

*If confirmed, what will you do to ensure you remain fair and impartial to all parties, and ensure you will not provide special preferences?*

**Answer: If confirmed, I will treat both petitioners and the IRS respondent in an equal and professional manner and not favor any particular litigant or their representative, regardless of whether they appear routinely before the Tax Court. To this end, I will strive to maintain a neutral decorum to avoid even the appearance of bias.**

### **Senator Daines**

#### **Question 1**

As of April 2024, the US Tax Court had a backlog of 750 conservation easement cases. Last Congress, my bill, the Charitable Conservation Easement Program Integrity Act, was signed into law to provide clarity on a number of these cases. Since then, a number of cases have been decided with differing outcomes, setting various precedents, and a large backlog remains.

*If confirmed to the US Tax Court, how will you approach these cases and help clear the backlog?*

**Answer: I believe taxpayers deserve certainty and efficiency in our system of taxation. If confirmed, I will impartially apply the various precedents to the facts of any conservation easement cases that come before me. As more cases are decided, the law should become more settled, allowing for cases to be resolved more quickly. I would also encourage the parties to work cooperatively so that issues may be resolved without the need for a trial.**

### **Senator Young**

While the questions below are numerically separated by theme for clarity and convenience, some may include sub-part questions denoted alphabetically. **Please note that individual responses to each sub-question are expected** and that a single response to multiple sub-questions will be treated as unresponsive.

For the purposes of questions that clearly end in “yes or no,” answers other than “yes” or “no” will similarly be deemed unresponsive to such questions.

#### **Question 1**

The Tax Court plays a critical role in interpreting tax law and resolving disputes between the IRS and taxpayers. As a nominee for this Article I judgeship, you will be responsible for hearing a wide range of cases.

*Can you elaborate on your approach to applying the law impartially and ensuring consistent application of tax code to all taxpayers, regardless of their background?*

**Answer: If confirmed, I will impartially apply any applicable provisions of the Internal Revenue Code, taking into account the plain text of those provisions and any binding**

**precedent. I will consistently apply this interpretive process to all cases that come before me, regardless of the background or sophistication of the petitioner. In addition, to ensure a consistent application of the facts to the law, I will strive to allow all petitioners, regardless of background and to the extent permitted under the law, to make their best case and present all relevant facts.**

## **Question 2**

Mr. Way, in your time at the Joint Committee on Taxation you have worked on a number of legislative items, including the IRA-related energy provisions.

*Should the court hear cases on these and other legislative items, how would you differentiate your role as instrumental in constructing the law with your role to impartially hear the case of taxpayers?*

**Answer: I recognize that the judicial process is fundamentally different from the legislative process. If confirmed, I will apply the law *as written* to any case before me. To that end, I would apply any applicable provisions of the Internal Revenue Code, taking into account the plain text of those provisions and any binding precedent. I would not consider any role I or my Joint Committee on Taxation staff colleagues may have had in the legislative process.**

## **Question 3**

*a) Given the tremendous backlog of cases currently facing the U.S. Tax Court, what specific strategies would you implement to expedite case resolution?*

**Answer: If confirmed, I would strive to resolve cases promptly, while at the same time ensuring that every petitioner has an opportunity to be heard and have their case thoughtfully considered. To the extent possible and where amenable to the parties, I will seek to leverage the Tax Court's relatively recent ability to have remote trial sessions, where that might prove convenient for taxpayers.**

*b) Would you consider increasing the number of hours that the U.S. Tax Court is open to hear cases?*

**Answer: If confirmed, I would certainly consider ways to make the Tax Court more productive such that cases are resolved efficiently, taking into account any relevant laws and regulations. including consulting with the Chief Judge.**

*c) How do you envision these strategies mitigating the harmful effects that prolonged case backlogs have on taxpayers awaiting decisions?*

**Answer: If implemented, I would envision these strategies as helping to reduce the backlog of cases while ensuring that every case is thoughtfully considered.**

## **Question 4**

The lack of access to the Public Access to Court Electronic Records (PACER) service has been a significant concern for many taxpayers. It often takes an expensive courier service or an in person visit for a taxpayer to access records on their case.

*a) What measures would you propose to enhance the accessibility and transparency of court records through PACER?*

**Answer: I understand that the Tax Court's DAWSON case management system operates in a manner similar to PACER and makes many documents publicly available, while at the same time protecting certain personally identifiable information. If confirmed, I will encourage the Tax Court to increase the effectiveness of DAWSON while maintaining these privacy protections.**

*b) How do you believe improved access to these records would impact taxpayer service and trust in the judicial process?*

**Answer: Easy access to court records that maintain protections for personally identifiable information can reduce the costs and frustration associated with an in-person visit or courier service. Any reduction in administrative burdens would improve taxpayer confidence and satisfaction with the process and increase transparency and public accountability more broadly.**