

**Responses of Richard Gergel
Nominee to the U.S. District Court for the District of South Carolina
to the Written Questions of Senator Jeff Sessions**

- 1. You have had significant litigation and trial experience, but your experience is limited primarily to representing plaintiffs in medical malpractice litigation. If confirmed, will you be able to put aside your experience of representing solely one-side and be a neutral umpire?**

Response: I am confident that I can be fair and impartial to all parties. In regard to my experience as a litigator, I have had the privilege of representing very diverse clients. I have represented plaintiffs and defendants in a broad range of civil litigation, including extensive work as defense counsel representing the State of South Carolina and the City of Columbia. My 30 years of experience as a litigator have taught me that what all parties and counsel desire is a judge who provides a fair and level playing field in which to address claims and defenses. If fortunate enough to be confirmed, I pledge to provide all parties a fair and impartial forum.

- 2. In your questionnaire, you indicated that you have no experience litigating criminal cases. Criminal cases account for a substantial portion of the federal docket. If confirmed, how do you plan to educate yourself with respect to federal criminal law and procedure?**

Response: Since being nominated by the President, I have engaged in study and review of federal criminal law and procedures, including a careful analysis of the Federal Sentencing Guidelines. This has included reading various books provided by the Federal Judicial Center and observing numerous federal criminal trials, guilty pleas and sentencing proceedings. If confirmed, I will continue my study of federal criminal law and procedures, participate fully in programs offered by the Federal Judicial Center and consult regularly with my very experienced colleagues on the Federal District Court bench in South Carolina.

- 3. According to a press report, an associate described you as “a dyed-in-the-wool Democrat, [who] selects cases even if they put him at odds with party leaders.”**
- a. If confirmed, will you allow your political beliefs to influence your decisionmaking?**

Response: No.

- b. Do you think it is ever proper for a judge to indulge in his or her own policy preferences in determining what the law means? If so, under what circumstances?**

Response: No.

4. **During the 2008 presidential campaign, President Obama described the types of judges that he will nominate to the federal bench as follows:**

“We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

- a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama’s criteria for federal judges, as described in his quote?**

Response: I presume by my nomination that I met the standards of the President to be a United States District Judge.

- b. **During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: Yes.

- c. **What role do you believe empathy should play in a judge’s consideration of a case?**

Response: None.

- d. **Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means? If so, under what circumstances?**

Response: No.

- e. **As you know, Justice Stevens recently announced his retirement. The President said that he will select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: A judge should base his or her decisions solely on the law and facts presented.

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

Response: I received these questions on Friday, April 23, 2010, reviewed each question with considerable care and prepared my responses. Those responses were discussed with Department of Justice staff and then submitted to the Judiciary Committee.

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

Response: Yes.

Responses of Richard Gergel
Nominee to the U.S. District Court for the District of South Carolina
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. The Constitution is based upon a set of fixed, enduring principles.

- 2. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: The United States Supreme Court, in a long line of precedents, has held that congressional power under the Commerce Clause is broad but not absolute. The reasoning and holding of both *Lopez* and *Morrison* are consistent with that approach, as explained in the more recent decision of *Gonzales v. Raich*, 545 U.S. 1 (2005).

- 3. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: My duty as a United States District Judge would be to respect and apply the holdings and analyses of the United States Supreme Court.

- a. How would you determine what the evolving standards of decency are?**

Response: I would look to the relevant precedents of the United States Supreme Court and the Fourth Circuit Court of Appeals and faithfully apply the standards adopted by those appellate courts.

- b. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: No. The United States Supreme Court has consistently held that the death penalty is a constitutional form of punishment under the Eighth Amendment.

c. What factors do you believe would be relevant to the judge's analysis?

Response: A District Judge in the District of South Carolina should apply the controlling precedents, holdings and standards of the United States Supreme Court and the Fourth Circuit Court of Appeals.

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

Response: No.

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

Response: Not applicable.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: I do not believe foreign law should be utilized to determine the meaning of the United States Constitution.