

Responses of Robert J. Shelby
Nominee to be United States District Judge for the District of Utah
to the Written Questions of Senator Chuck Grassley

- 1. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. Justice Roberts addressed this issue at his hearing saying that “If the Constitution says that the little guy should win, the little guy’s going to win in court before me. But if the Constitution says that the big guy should win, well, then the big guy’s going to win.”**

a. To what extent does empathy have a place in the judicial process?

Response: I believe judges should be diligent, humble, respectful, patient and civil. Understanding that the cases presented are of great importance to the parties, and that the judicial process often is intimidating, may serve to reinforce the importance of appropriate judicial temperament. Empathy for the parties or their interests may play no role whatsoever in the determination of the issues presented.

b. In your view, what is determinative as to who wins or loses?

Response: I believe judges should decide only those issues presented in the cases before them, based solely on the facts presented, and while demonstrating a strict adherence and fidelity to the rule of law.

c. In your opinion, what is the role of the judge in protecting the interests of the “little guy?”

Response: I do not believe it is the proper role of a judge to seek to protect interests of any parties, irrespective of whether those parties might be described as “big guys” or “little guys.” To the contrary, I believe it is the judge’s responsibility to reach decisions based exclusively on the application of established precedent to the specific facts presented.

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

Response: I believe integrity is the most important attribute of a judge. This includes an unwavering commitment to exercising only those limited powers vested in the judiciary, while adhering at all times to the rule of law. I possess this attribute.

3. 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: Given their frequent and direct interaction with parties and the public, I believe it is essential that trial court judges conduct themselves at all times in a manner that inspires trust and confidence in the judicial process. Inherent in this notion is the responsibility to ensure that all parties believe they have been afforded a full and fair opportunity to be heard by a judge who is well prepared, impartial, respectful, patient, and firmly committed to deciding issues based exclusively on the applicable legal doctrine. If confirmed, I am committed to this approach as a trial judge.

4. **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. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

5. **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: After ensuring I understood fully the specific facts at issue, I would carefully examine Supreme Court and Tenth Circuit cases in analogous areas. If it was warranted, I would further research instructive or persuasive appellate and trial court decisions in other federal and state jurisdictions. If the issue presented was one involving a statute, I would begin with the express language of the statute. If the text was unclear, I would examine other related provisions in the statute for guidance.

6. **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: My personal views and judgments concerning the appellate decision would be entirely irrelevant to my decision making duties as a district court judge. I would faithfully apply the precedent established by the Supreme Court and the Tenth Circuit.

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

Response: Federal courts are instructed to avoid deciding questions concerning the constitutionality of a statute if there exist other bases on which the issue presented may be resolved. In the event the constitutionality of a statute must be decided,

Congressional enactments are afforded a strong presumption of constitutionality. As such, statutes are appropriately found unconstitutional only where they contravene a provision of the Constitution, or where Congress has acted outside its enumerated powers by enacting the statute.

- 8. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I intend to meet with my colleagues on the district court bench to discuss practices for case docketing and management. To the extent the judges on our bench employ different case management methods, I intend to educate myself about the techniques used by each, and to select the process I deem best suited to actively monitoring and managing caseloads. Among other things, I would utilize technologies and tools available to the courts, in concert with active coordination with my designated case manager and law clerks.

- 9. 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 judges play an important role in controlling the pace and conduct of litigation before the courts. My experience as a practitioner is that parties generally desire assistance from the courts both in terms of moving cases towards resolution, and with timely consideration of motions. If confirmed, I would follow the course described in my response to Question 8 above.

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

Response: I received these questions Wednesday, April 4, 2012. I prepared and submitted answers to the Department of Justice the following day. I briefly reviewed my answers with a representative of the Justice Department on April 6, before authorizing their submission to the Senate Judiciary Committee.

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

Response: Yes.