

**Responses of Stephanie Thacker
Nominee to be United States Circuit Judge for the Fourth Circuit
to the Written Questions of Senator Jeff Sessions**

- 1. Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

Response: The Supreme Court has held in *District of Columbia v. Heller*, 554 U.S. 570 (2008) that the Second Amendment confers an individual right to keep and bear arms.

- a. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

Response: If confirmed and presented with a case involving a Second Amendment challenge, I would closely review binding Supreme Court precedent in this regard, including *Heller* and *McDonald*, and would follow applicable precedent in determining the constitutionality of the particular issue presented at the time. The Supreme Court has held that there is an individual fundamental constitutional right to keep and bear arms. Therefore, a heightened level of scrutiny should be applied in such circumstances.

- 2. What is your view of the role of a judge?**

Response: The role of a judge is to exercise restraint, impartiality, and fairness in reviewing the legal issues that come before the Court, and to rule promptly within the confines of controlling legal precedent.

- 3. Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances?**

Response: No.

- 4. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances?**

Response: No.

- 5. As you may know, President Obama has 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. **Do you believe that you fit President Obama’s criteria for federal judges, as described in his quote?**

Response: While I would exhibit respect for all parties who come before the court, I do not believe that empathy for any particular party or issue should play any role in judicial decision making. Rather, the role of a judge is to hear and decide cases based upon an impartial application of the law to the facts, and not based on empathy. Empathy would not play a role in my decision making process if I am confirmed.

- 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 that empathy should play in a judge’s consideration of a case?**

Response: I do not believe that empathy should play any role in a judge’s consideration of a case.

- d. **Do you think that it is proper for judges to consider their own subjective sense of empathy in determining what the law means?**

Response: No.

- i. **If so, under what circumstances?**

Response: Not applicable.

- ii. **Please provide an example of a case in which you have considered your own subjective sense of empathy in determining what the law means.**

Response: I do not have any example of a case where I have used such a standard to determine what the law means. I have not done so.

- iii. **Please provide an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.**

Response: Since I have not previously served as a judge, and, therefore, have not issued rulings, I cannot identify any such examples.

6. **Under the Supreme Court’s decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory. It seems to me that as long as the sentencing judge (1) correctly calculates the guidelines, and (2) appropriately considers factors set forth therein, the judge may impose any sentence ranging from probation to the statutory maximum. Following the Supreme Court’s decision in *Gall v. United States*, appellate courts must apply the highly deferential “abuse of discretion” standard when reviewing these sentencing decisions. As a result, district court judges may impose virtually any sentence, and as long as the decision is procedurally sound, there is virtually no substantive review on appeal.**

- a. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: Yes. I agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw.

- b. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

Response: Although the Sentencing Guidelines are now advisory rather than mandatory, they should be accorded deference and are an important component to achieving fairness, uniformity, and justice in sentencing. The Guidelines themselves provide the standards applicable for various grounds for departure. Typically, these grounds are limited in nature and include factual scenarios that are well outside the norm for a given offense. There is also a body of Fourth Circuit precedent applying the various limited grounds for departure to a variety of factual scenarios. Additionally, a judge must also take into account the sentencing factors set forth in 18 USC 3553(a).

7. **Do you believe it is ever appropriate for American judges to rely on foreign law when interpreting the U.S. Constitution? If so, under what circumstances?**

Response: No. The United States Constitution is appropriately interpreted by reference to the text of the Constitution itself and United States legal sources, specifically the United States Supreme Court. As a result, if confirmed, I would not consult foreign law in order to interpret the Constitution unless directed to do so by the Supreme Court.

8. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution?**

Response: The Supreme Court has ruled that the death penalty is constitutional and does not constitute cruel and unusual punishment. I would follow Supreme Court precedent in this regard, if confirmed.

- a. **Do you hold any personal views that would not permit you to enforce the death penalty?**

Response: No.

b. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has ruled that the death penalty is an acceptable form of punishment and I would follow Supreme Court precedent in this regard, if confirmed.

9. Given the greater availability of legislative history in the federal system, do you think it is proper for federal judges to look to legislative history when construing an otherwise unambiguous statute?

Response: If a statute is clear and unambiguous, then the language of the statute controls without regard to the legislative history.

a. Would it ever be proper for a court to determine that the meaning of a seemingly unambiguous statute is ambiguous based on the legislative history of that statute?

Response: No.

b. To what extent do you think a court should look to legislative history when a statute is ambiguous on its face?

Response: If a statute is ambiguous, a court should turn first to available analogous Supreme Court and appellate court precedent in order to seek guidance in interpreting the statute. However, on occasion, when there is no other controlling court authority, courts may look to other sources, including official legislative history.

10. 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? Please explain your answer.

Response: No. I do not agree with this statement.