

Responses of Anthony J. Battaglia
Nominee to be United States District Judge for the Southern District of California
to the Written Questions of Senator Jeff Sessions

1. **In your questionnaire, you reported that, since 1974, you have been a member of the Association of Trial Lawyers of America, which recently changed its name to the American Association for Justice. The American Association for Justice takes some controversial positions, among them its vocal criticism of arbitration clauses in contracts. On its website, it claims that “[a]rbitration providers are biased decision makers, organized to serve corporations. Since only businesses are repeat users of an arbitrator, there is a disincentive for an arbitrator to rule in favor of a consumer if he expects further retentions.”**

- a. **Do you agree with that statement?**

Response: I am not familiar with the statement, however, I do not agree with it. My Court regularly utilizes arbitrations and mediations as alternative dispute resolution proceedings to manage civil cases. I was a regular member of this association from 1977 until November 1993. I have been a nonvoting “Judicial Member” of this organization since November 1993. I do not follow what positions the organization takes. I have retained this type of membership to have access to the scholarly articles on civil trial practice and procedure in *Trial Magazine*. I also receive and read *For The Defense*, which declares itself as “The magazine for defense, insurance and corporate counsel.” That publication is made available without the need for any form of membership.

- b. **If confirmed, you will be required to hear cases dealing with the arbitration clauses of contracts. In ruling on such cases, would your analysis be influenced by the idea that “Arbitration providers are biased decision makers, organized to serve corporations”?**

Response: No, I would rule solely on the evidence and the law.

- c. **On June 21st of this year, the AAJ put out a press release on the Supreme Court’s decision late last term in *Rent-a-Center, West, Inc. v. Jackson*. In that case, the Supreme Court held that, in order for the courts to let people out of their agreements to have all disputes, including disputes over the validity of their arbitration agreement, settled by arbitration, they must show that they willingly entered into that agreement. In the press release, AAJ President Anthony Terricone said:**

“The Supreme Court today gave corporations yet another free pass to submit employees and consumers to abusive forced arbitration proceedings. Corporations now have nearly unchecked authority to write, enforce and judge the fairness of their own forced arbitration clauses. The fox is guarding the hen house – at the expense of citizens’ access to the civil justice system.”

Do you agree with Mr. Terricone’s characterization of the *Rent-a-Center* case?

Response: No, I do not agree, and I would not be influenced by that view. I would apply the laws stated by the Supreme Court.

2. When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.”

a. Do you believe judges should ever base their decisions on a desired outcome?

Response: No.

i. If so, under what circumstances?

Response: None.

ii. Please identify any cases in which you have done so.

Response: I have not done so.

iii. Please discuss an example of a case where you have had to set aside your own desired outcome and rule based solely on the law.

Response: None. I rule solely on the evidence and the law, without consideration of my values, beliefs or desires.

b. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: None.

ii. Please identify any cases in which you have done so.

Response: I have not done so.

iii. If not, please discuss an example of a case where you have had to set aside your own values or policy preferences and rule based solely on the law.

Response: None. I rule solely on the evidence and the law, without consideration of my values, beliefs or desires.

- c. **During her confirmation hearings, Justice Sotomayor rejected President Obama's 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.

3. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: No. The Supreme Court has held that the death penalty is an acceptable form of punishment, and I faithfully follow the law in this regard.

4. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: Yes. The Supreme Court has held that the death penalty is an acceptable form of punishment, and I faithfully follow the law in this regard.

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

Response: The role of a judge is to decide each case fairly, impartially, and based solely on the evidence and the law.

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

Response: I drafted my responses. I then finalized them after discussing my draft with representatives of the Department of Justice.

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

Response: Yes.