

**Responses of Brian Anthony Jackson  
Nominee to the U.S. District Court for the Middle District of Louisiana  
to the Written Questions of Senator Jeff Sessions**

- 1. 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. I recognize that you do not know 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: To the extent the President’s concept of empathy, as applied to judges, requires that judicial officers be committed to treating all citizens who appear before them with fairness, looking beyond any personal bias or prejudice, I believe I would satisfy his criteria.

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

Response: Empathy, as defined in a manner consistent with the concept of “blind justice,” (that is, a quality of judging that is free of personal bias or personal opinion and that reflects broadly a factual understanding of the circumstances of the litigants) is important to our nation’s justice system. Judges should be committed to rendering decisions that are free of personal bias. A judge’s personal feelings about litigants should play no role in the court’s rulings.

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

Response: No. Judges should commit themselves to rendering fair and unbiased justice in a manner consistent with the Constitutional factors identified by the Supreme Court. A subjective approach to determining what the law means is inappropriate, as it could result in the failure to following precedent.

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

Response: See above.

**2. Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.**

- a. 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. If confirmed to serve on the federal bench, I would commit myself to faithfully following the precedents of the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court.

- b. How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision to the facts presented before you?**

Response: If confirmed to the district court, I would be committed to rendering decisions that are consistent with stare decisis and that are consistent with precedents of the higher courts on all legal questions, notwithstanding my personal views.

**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. The Supreme Court and the Courts of Appeals have provided ample guidance to the lower courts, in the form of precedents, when deciding what the law means. District judges must be bound solely by the jurisprudence of prior appellate court decisions.

**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. I fully appreciate the limits of judicial authority. If confirmed to serve on the federal bench, I would not impose my personal views on public policy matters in my judicial decisions.

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

Response: After receiving these written questions through the Justice Department, I personally drafted answers thereto after reflecting carefully on each one. I then discussed my answers with members of the Justice Department and made a few revisions to them before forwarding the answers to the Judiciary Committee through the Justice Department.

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

Response: Yes.

**Responses of Brian Anthony Jackson**  
**Nominee to the U.S. District Court for the Middle District of Louisiana**  
**to the Written Questions of Senator Tom Coburn**

- 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. In my view, the Constitution is not a document that evolves as society interprets it. The original text of the Constitution should be given great deference by the courts. Consideration of its original meaning should be the controlling factor in its interpretation.

- 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. Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: The Supreme Court ruled in *Gonzalez v. Raich*, 545 U.S. 1 (2005), that *Lopez* and *Morrison* are consistent with prior decisions interpreting the Commerce Clause. In *Gonzalez*, the Court noted that, “[o]ur opinion in *Lopez* casts no doubt on the validity” of the ability of Congress to regulate economic activities that affect interstate commerce.

- 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: Justice Kennedy’s analysis formed the basis of the holding in the *Roper* case. As a district court judge, I am bound to following the decisions of the court, notwithstanding my personal views.

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

Response: As a district judge, I would adhere to the precedents of the Supreme Court and the Court of Appeals, including those that provide guidance on this issue.

- 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. Because the Supreme Court has ruled that capital punishment is a constitutionally-sanctioned penalty, it would not be appropriate for a district judge to ever consider “evolving standards of decency” in applying the death penalty.

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

Response: *Roper* is now binding precedent on all federal judges. As such, I would be guided by the factors identified by the Supreme Court’s decision in the case, notwithstanding my personal views on the appropriateness of the factors.

- 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: See above.

- b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?**

Response: No.