

**Nomination of Joel M. Carson III to the
United States Court of Appeals
For the Tenth Circuit
Questions for the Record
Submitted February 21, 2018**

QUESTIONS FROM SENATOR WHITEHOUSE

1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”
 - a. Do you agree with Justice Roberts’ metaphor? Why or why not?

Yes. Although the analogy is not precise, I believe it is a fair way of describing a judge’s constitutional duty to apply or interpret the laws as written by Congress. The Judicial Oath makes clear that a judge is to faithfully and impartially discharge and perform his or her duties—much like an umpire—without respect to persons and to do equal right to the poor and rich.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

Generally, the legislative branch is best suited to consider the practical consequences of any law. The Supreme Court has held, however, that judges may consider the practical implications of the law in certain equitable proceedings, such as applications for preliminary injunction where the judge must determine whether the applicant will suffer irreparable injury. Thus, there are certain instances where practical consequences play a role in judicial decision-making.

2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “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.”
 - a. What role, if any, should empathy play in a judge’s decision-making process?

A judge’s role is to interpret and apply the laws passed through bicameralism and presentment regardless of a judge’s subjective personal opinions regarding those laws. That said, judges are not devoid of empathy or human emotion. Compassion and empathy are reflected, however, in the laws that judges must apply such as 18 U.S.C. § 3553(a). That statute, which requires the judge to “provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner,” incorporates considerations where empathy and compassion for the person being sentenced may play a role.

- b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?

A judge’s person life experience may give rise to an understanding of the facts and circumstances of a particular case. The judge cannot, however, disregard the rule of law based upon personal beliefs or preferences. The

judge must fulfill the judicial oath by applying the law evenhandedly to all persons appearing in his or her court.

3. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No.

4. Given your extensive history of working on behalf of the oil and gas industries, do you believe you can be neutral and objective when considering cases involving those industries? What steps will you take to ensure that?

Yes. If confirmed, I will dutifully adhere to precedent of the Tenth Circuit and Supreme Court. As required by 28 U.S.C. § 453, “I will faithfully and impartially discharge and perform all duties incumbent upon me ... under the Constitution and laws of the United States,” regardless of the parties appearing in the case. In the event of an appearance of a conflict of interest in a case, I will analyze my participation as a judge in the case under 28 U.S.C. § 455 and, if appropriate, recuse from the case.