

**Responses of Charlene Edwards Honeywell
Nominee to the U.S. District Court for the Middle District of Florida
to the Written Questions of Senator Jeff Sessions**

Gun Rights

1. According to a June 24, 1994 article in the *St. Petersburg Times*, a Fort Lauderdale gun show promoter, Atlantic Show Promotions, filed suit in federal court alleging that Tampa's ban on gun shows and sales at the Tampa Convention Center was an unconstitutional attempt to regulate political and commercial speech about guns. The city had refused the request despite the fact that Tampa had permitted Atlantic to operate a gun show in 1993. As Assistant City Attorney, you were quoted as saying: "Our position is that if speech is involved, it's commercial speech, which is not entitled to the same protection under the law as political speech."

- a. Do you stand by your statement indicating that you believe that the City of Tampa's ban on gun shows and sales at the convention center was constitutional?

Response: In June of 1994, I served as an Assistant City Attorney for the City of Tampa and chief of the City's litigation division. In that capacity, I advocated the City's position with regard to a prohibition of gun shows on city owned property. The mayor of Tampa, then, Sandra Freedman, and her staff decided in March of 1994 to prohibit gun shows on city owned property. The statement that I made to the reporter from the *St. Petersburg Times* was made in my capacity as a zealous advocate for my client, the City of Tampa. Given the status of the law in 1994, the position advanced by the City was honestly debatable. If confirmed by the Senate to serve as a District Court Judge, I will follow legal precedent, pursuant to the doctrine of stare decisis, on this issue.

- b. Does the Supreme Court's opinion in *District of Columbia v. Heller*, holding that the right to bear arms is an individual right affect your analysis of the constitutionality of the ban?

Response: *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008) had not been decided when the City of Tampa announced its ban prohibiting gun shows on city owned property. *Heller* was decided by the Supreme Court of the United States on June 26, 2008. If confirmed by the Senate to serve as a District Court Judge, I will follow legal precedent, including *District of Columbia v. Heller*, supra.

- c. In *Nordyke v. King*, the Ninth Circuit evaluated whether a county ordinance prohibiting the possession of firearms on county property, and thereby prohibiting a gun show on county property, was

constitutional. In its opinion, the Court held that the Second Amendment had been incorporated against the states through the Due Process Clause of the Fourteenth Amendment. The Supreme Court has not yet addressed this question. Do you agree that the Fourteenth Amendment makes the Second Amendment applicable against state and county governments?

Response: In *Nordyke v. King*, 563 F.3d 439 (9th Cir. 2009), the Ninth Circuit did find that the due process clause of the Fourteenth Amendment incorporates the Second Amendment and applies it against states and local governments. However, a few weeks ago, on July 29, 2009, in *Nordyke v. King*, 575 F.3d 890 (9th Cir. 2009), the Ninth Circuit decided to rehear the previous *Nordyke v. King* decision en banc and indicated that the previous three judge panel opinion should not be cited as precedent by or to any other court of the Ninth Circuit. Therefore, it appears that the issue of the application of the Second Amendment to the states via the Fourteenth Amendment is still an unsettled area of the law. Until the U.S. Supreme Court or the Eleventh Circuit Court of Appeals rules on this issue, it would be inappropriate for me, a district court nominee, to opine on this matter. If confirmed by the Senate to serve as a District Court Judge, I will follow legal precedent pursuant to the doctrine of *stare decisis*.

2. **Following your statement, the U.S. District Court for the Middle District of Florida, granted a preliminary injunction in favor of Atlantic against the City of Tampa. The District Court held that the State of Florida had pre-empted the field of gun regulation which prevented Tampa from arguing successfully that its refusal to allow the gun show advanced a strong municipal interest. The Court further rejected Tampa’s alternative argument that a gun show would put the Convention Center in a bad light. The District Court noted Supreme Court precedent holding that commercial speech is entitled to some First Amendment Protection, and that “[t]he loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Do you agree with the district court’s ruling?**

Response: I agree with the district court’s ruling.

Empathy

1. **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 the President’s criteria for federal judges, as described in his quote?**

Response: To the extent that I am an African American woman, I fit one of President Obama's criteria for federal judges.

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

Response: Empathy does not play a role in my consideration of cases. Presently, I decide cases by applying the law to the facts of the cases pending before me. If confirmed by the Senate to serve as a District Court Judge, I will decide cases in the same manner.

Public Defender

1. Early in your career you spent several years as a public defender.

a. How will this experience impact your judging?

Response: My experience as an Assistant Public Defender will not have any particular impact on my judging. In addition to serving as an Assistant Public Defender for five years, I served as an Assistant City Attorney representing a governmental body, a municipal corporation, for seven years. Further, as a shareholder with a major Tampa law firm, I represented many corporate defendants for six years. I am the product of all of these experiences. However, I don't decide cases based upon my experiences. Presently, as a state court judge, and if confirmed by the Senate to serve as a District Court Judge, I will decide cases by applying the law to the facts of the cases pending before me.

b. Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

Response: No, I do not have any legal or moral beliefs which will inhibit or prevent me from imposing or upholding a death sentence in any criminal case that might come before me as a federal judge. If confirmed by the Senate as a District Court Judge, I will take an oath and follow that oath to uphold the Constitution of the United States of America and the laws of this country.

c. Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long?

Response: The reasons for delays between conviction of a capital offender and execution are numerous and varied. The reasons for delays depend upon the particular facts of each case. Therefore, I am unable to address this

question specifically. Additionally, as a state court judge, I am prohibited from rendering an opinion on a matter that may come before me.

- d. **Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases expeditiously?**

Response: Federal courts have the responsibility of applying the law to the facts of cases before them and of doing so in a timely manner.

Precedent

1. **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: I am committed to following the precedents of higher courts faithfully and giving them full force and effect. As part of my training after becoming a state court judge, I was taught that, as a judge, I have no personal opinions, i.e., my personal opinions don't matter. That advice has served me well over the past eight and one-half years. My role is simply to apply the law to the facts of the cases before me in an impartial and unbiased manner.

- 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 of your own best judgment of the merits?**

Response: If confirmed by the Senate to serve as a District Court Judge, it would not be my role to question the opinions of courts of appeal or of the United States Supreme Court. Rather, I would be required to follow legal precedent, pursuant to the doctrine of *stare decisis*. Therefore, I would apply decisions of the Supreme Court or the Eleventh Circuit Court of Appeals.

The Role of a Judge

1. What in your view is the role of a judge?

Response: The role of a judge is to apply the law to the facts of the case pending before the judge, and to do so in an impartial, unbiased and timely fashion.

a. How would you define “judicial activism?”

Response: I don’t use the term “judicial activism” because of the confusion surrounding its meaning. Judicial activism is usually used to criticize judicial rulings that are viewed as unreasonable interpretations of laws and or cases which are tantamount to legislating from the bench.

b. 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: There are numerous meanings and conflicting contentions surrounding the idea of a “living” constitution. As such, I am unable to agree with any broad or general classifications of the Constitution. The Constitution represents the supreme law of this land. If confirmed by the Senate to serve as a District Court Judge, I will uphold the Constitution and follow legal precedent which has interpreted its provisions.