

**Responses of Albert Diaz
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Charles E. Grassley**

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

Response: The role of a judge is to decide cases by fairly and impartially applying the law, as set forth in the Constitution, applicable statutes and regulations, and precedent. In doing so, a judge should be mindful of the limits of judicial power, and respect the constitutional prerogatives of the other co-equal branches of government.

2. Do you believe it is ever appropriate for judges to indulge their own values in determining the meaning of statutes and the U.S. Constitution?

Response: No.

a. If so, under what circumstances?

Response: See my response above.

b. Please provide an example of a case in which you have done so.

Response: I have never done so.

c. Please provide an example of a case where you have had to set aside your own values and rule based solely on the law.

Response: I do not recall ever having done so.

3. Do you believe it is ever appropriate for judges to indulge their own policy preferences in determining the meaning of statutes and the U.S. Constitution?

Response: No.

a. If so, under what circumstances?

Response: See my response above.

b. Please provide an example of a case in which you have done so.

Response: I have never done so.

- c. **Please provide an example of a case where you have had to set aside your own policy preferences and rule based solely on the law.**

Response: In *Latigo Invs. II, LLC v. Waddell & Reed Fin., Inc.*, 06 CVS 18666, 2007 NCBC LEXIS 17 (N.C. Super. Ct. Jun. 11, 2007), I dismissed a claim alleging a violation of the North Carolina Unfair and Deceptive Trade Practices Act arising out of alleged misrepresentations made by the defendant during the issuance of corporate securities. I did so because binding precedent excluded capital raising transactions from the reach of the statute. As I noted in my order, however, I believed that result to be inconsistent with the broad remedial purpose of the statute. *Id.* at ¶ 47.

4. **How do you define “judicial activism?”**

Response: I have no personal definition of the term, but as commonly used, it describes a process by which a court extends judicial power beyond its proper limits and engages in results-oriented decision making at the expense of applicable law and precedent.