

**Responses of John J. McConnell, Jr.  
Nominee to be United States District Judge for the District of Rhode Island  
to the Written Questions of Senator Grassley**

1. During the 2008 presidential campaign, President Obama described the kind of judge that he would 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. Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit the President’s criteria for federal judges, as described in this quote?

Response: I assume that I met President Obama’s criteria for a federal judgeship because he nominated me to fill a vacancy on the District Court for the District of Rhode Island after a thorough review of my background and record.

- b. During her confirmation hearing, Justice Sotomayor rejected this 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.

- c. Do you believe that it is ever appropriate for judges to indulge their own subjective sense of empathy in determining what the Constitution and the laws mean? If so, under what circumstances?

Response: No.

- d. Do you believe that it is ever appropriate for judges to indulge their empathy for particular groups or certain people? For example, do you believe that it is appropriate for judges to favor those who are poor? Do you believe that it is appropriate for judges to disfavor corporations?

Response: No, for every case and for every litigant, empathy should play no role in a judge’s decisions. It is never appropriate for a judge to favor or disfavor any litigant, including corporations.

- e. After Justice Stevens announced his retirement, President Obama stated that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe that judges should base their decisions on a desired outcome?

Response: No.

**2. What, in your view, is the role of a judge? Please describe your judicial philosophy.**

Response: The role of a judge is to apply existing law, as set forth in precedents from the U.S. Supreme Court and the U.S. Court of Appeals for the First Circuit, to the facts presented. My judicial philosophy would be to fulfill that role in an impartial, unbiased, and procedurally fair and efficient manner.

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

Response: Judicial activism, as I would use the term, occurs when a judge decides a case to achieve a desired result or a result consistent with a judge’s own personal policy point of view, rather than based on the law and applicable precedents. It would include a failure to give proper deference, where appropriate, to the elected branches of government.

**4. Could you identify three recent Supreme Court cases that you believe are examples of “judicial activism”? Please explain why you believe these cases are examples of “judicial activism”.**

Response: I do not think about U.S. Supreme Court cases as examples of judicial activism. If I am confirmed as a judge on the trial court, my role will be to follow the law as set forth by the U.S. Supreme Court and the Court of Appeals for the First Circuit. In that role, therefore, I would be bound to follow any opinion by the Supreme Court that has not been overturned or modified, regardless of my personal opinion about whether that Supreme Court case represented an exercise of judicial activism or judicial restraint.

**5. How do you define “judicial restraint”?**

Response: Judicial restraint, as I would use the term, occurs when a judge properly applies the law to the facts, setting aside all policy and other considerations that are not appropriate to the courts.

**6. Could you identify three recent Supreme Court cases that you believe are examples of “judicial restraint”? Please explain why you believe these cases are examples of “judicial restraint”.**

Response: I do not think about U.S. Supreme Court cases as examples of judicial restraint. If I am confirmed as a judge on the trial court, my role will be to follow the law as set forth by the U.S. Supreme Court and the Court of Appeals for the First Circuit. In that role, therefore, I would be bound to follow any opinion by the Supreme Court that has not been overturned or modified, regardless of my personal opinion about whether that Supreme Court case represented an exercise of judicial activism or judicial restraint.

- 7. Do you believe that it is ever appropriate for judges to indulge their own values and/or policy preferences in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- 8. Should the courts, rather than the elected branches of government, ever take the lead in creating a more “just” society?**

Response: By correctly and impartially applying the law to the facts in each case that comes before them, the courts make an institutional contribution to the justness of society. This institutional role is important, but courts, as the unelected branch of government, should not take the lead in creating a more just society.

- 9. In your opinion, what is the proper role of foreign law in U.S. court decisions, and is citation to or reliance on foreign law ever appropriate when interpreting the U.S. Constitution and statutes?**

Response: I cannot think of any instance where the use of foreign law would be proper when interpreting the U.S. Constitution and statutes. I do not believe that foreign law should ever be relied upon in interpreting the U.S. Constitution or statutes.

- 10. Does the silence of the U.S. Constitution on a legal issue allow a federal court to use foreign law as an authority for judicial decision-making? When is it not appropriate to look to foreign law for legal guidance or legal authority?**

Response: No. I cannot think of any instance where the use of foreign law would be proper when interpreting the U.S. Constitution and statutes. I do not believe that foreign law should ever be relied upon in interpreting the U.S. Constitution or statutes.

- 11. I would like to get a better understanding of how you would interpret statutes and what your judicial method would be if you were confirmed to be a judge on the District Court of Rhode Island.**

- a. In cases involving a close question of law, what would you look to when determining which way to rule?**

Response: I would look to the language of the statute and then the interpretations of the statutes by the U.S. Supreme Court and the U.S. Court of Appeals for the First Circuit.

- b. Would you agree that the meaning of a statute is to be ascertained according to the understanding of the law when it was enacted?**

Response: I will interpret the meaning of the statute based on the plain meaning of the statute as enacted.

- c. **How would you use legislative history when interpreting a statute? What kind of weight would you give legislative history, if any, when interpreting a statute?**

Response: I believe that reliance on legislative history is a last resort when interpreting a statute. Only if the language of the statute is not clear, or if there is no other guidance from higher courts about its interpretation, should a court consider legislative history when interpreting a statute.