

**Responses of J. Michelle Childs  
Nominee to the U.S. District Court for the District of South Carolina  
to the Written Questions of Senator Jeff Sessions**

1. **In a commencement speech, you said that judges should be “ambassadors for the protection of our system of jurisprudence” and that they “are uniquely positioned to ensure the fair administration of justice.”**

- a. **What is your definition of the “fair administration of justice”?**

Response: The “fair administration of justice” requires that judges act as fair and impartial arbiters, treat all litigants courteously, assess the particular facts and evidence presented in individual cases, make deliberate and well-reasoned decisions based on established legal precedent, and abide by the judicial canons and ethical standards of conduct.

- b. **As a judge, how have you ensured the fair administration of justice?**

Response: It is my consistent practice to approach each case in the manner described above.

2. **In *Mouzon v. State*, you considered an application for post-conviction relief for an individual whose probation had been revoked. The applicant claimed the revocation was based on insufficient records, and that he had insufficient counsel. You not only vacated a probation revocation which, I believe, was proper, but you also removed 3 years and 10 months from the applicant’s current probation, based in part on an ineffective assistance of counsel claim. According to your opinion, you based this remedy on a court’s equitable powers, citing a South Carolina Court of Appeals case which stated, “Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.”**

- a. **How did you come up with the specific remedy of removing 3 years and 10 months from the applicant’s probation?**

Response: The Mouzon case contained a factual question as to whether the presiding judge at the probation revocation hearing had revoked the applicant’s probation and subsequently sentenced the applicant to “consecutive” sentences. The applicant asserted that the probation officer, who avoided being served with the subpoena for the post-conviction relief hearing, had handwritten that term on the sentencing sheet after the probation revocation hearing. Faced with the dilemma that the probation officer refused to cooperate and the judge was deceased, I resolved the factual question in favor of the applicant. I arrived at this specific remedy to remove the impact of the disputed handwritten term on the sentencing sheet.

**b. Why did you believe this was reasonably necessary to “insure a just result”?**

Response: I determined that the applicant timely filed his application for post-conviction relief, but his hearing was delayed for years based on circumstances beyond his control which left him without an adequate remedy at law. In essence, the applicant had already served the prison sentence that he attempted to challenge and still had to serve the remainder of his probation sentence. Therefore, I considered the applicant’s request for equitable relief and found it to be reasonable and appropriate under the particular facts and circumstances of this case.

**3. You presided over a highly publicized case where an employee tied his boss to a chair, strapped a fake bomb onto him, and demanded \$500,000 or he would blow up the boss and his family. You originally sentenced the man to 38 years in prison. Three years later, you reduced his sentence to 25 years, after a medical evaluation indicated that there was a low risk that the defendant would commit another crime if he remained sober.**

**a. Can you explain in a little greater detail why you decided to reduce the individual’s sentence from 38 to 25 years?**

Response: I initially sentenced the defendant to a term of 38 years for various criminal offenses he committed against the victim. I required that the defendant serve some of the sentences concurrently and some of the sentences consecutively. The defendant timely filed a motion for reconsideration of the sentence. At the hearing on the motion for reconsideration, the defendant’s counsel articulated several arguments that he believed that I had not properly considered, including the defendant’s advanced age (50); his lack of a prior criminal record; that certain sentences for various offenses were to run consecutively instead of concurrently; and a medical evaluation showing defendant’s diagnosis of substance abuse and clinical depression, alternatives for treating these conditions, the defendant’s rehabilitative efforts, and a risk assessment of the defendant. I considered all of these factors and, consistent with the law, reduced the defendant’s sentence to 25 years which reflected a concurrent sentence on all charges.

**b. If confirmed, under what circumstances would you depart downward from the sentencing guidelines?**

Response: I understand the essential role of the Sentencing Guidelines in insuring uniformity, reasonableness, consistency, and predictability in the sentencing of criminal defendants. I would not depart downward from the Sentencing Guidelines, except when the criteria set forth therein or controlling legal precedent of the Supreme Court or the Fourth Circuit provide an appropriate basis on which to depart from the Sentencing Guidelines.

4. **During the 2008 presidential campaign, President Obama 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. **Without commenting on 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: Yes. Because President Obama nominated me, I presume I fit his criteria for federal judges.

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

Response: Empathy should play no role in a judge’s application of the law to the facts of a case.

- d. **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.

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

Response: Not applicable.

- ii. **Please identify any cases in which you have done so.**

Response: None.

- iii. **If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.**

**Response:** I have had cases involving plaintiffs with significant injuries who have failed to timely file a complaint within the applicable statute of

limitations period. When the law required me to dismiss the case, I followed the law faithfully.

- e. **As you know, Justice Stevens recently announced his retirement. The President said that he will select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: I believe judges should base their decisions solely on the law and facts presented in the case.

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

Response: I received the questions from the Department of Justice (DOJ) on April 23, 2010. I reviewed the questions, considered the issues, referenced documents related to the specific matters herein, and undertook legal research. I drafted my answers to the questions and discussed them with the DOJ. Thereafter, I finalized my answers and forwarded them to the DOJ for submission to the Senate Judiciary Committee.

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

Response: Yes.

**Responses of J. Michelle Childs**  
**Nominee to the U.S. District Court for the District of South Carolina**  
**to the Written Questions of Senator Tom Coburn, M.D.**

- 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.

- 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. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Supreme Court affirmed that the *Lopez* and *Morrison* decisions are consistent with its prior decisions on the Commerce Clause.

- 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: My views on the analysis of decisions of the Supreme Court or other appellate courts would have no impact on my work as a federal district judge. It is not the role of a federal district judge to question binding legal precedent, but instead to follow it.

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

Response: If confirmed, I would apply the analysis set forth in the applicable decisions of the Supreme Court and the federal appellate courts in determining the concept of “evolving standards of decency.”

- 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, unless the Supreme Court overrules its existing precedent.

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

Response: The factors identified in controlling precedent of the Supreme Court and the appellate decisions within the particular jurisdiction would be relevant to the federal district judge's analysis of this issue.

**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: Not applicable.

**b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: No.

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

Response: No. If confirmed as a federal district judge, I would apply the law set forth by the Supreme Court and the Fourth Circuit.