

**Responses of Robin S. Rosenbaum
Nominee to be United States District Judge for the Southern District of Florida
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.

- a. If not, please explain.**

Response: The principles embodied in our Constitution remain constant.

- 2. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No.

- a. If not, please explain.**

Response: The principles embodied in our Constitution remain constant.

- 3. What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

Response: First, I would consider any applicable Supreme Court and Eleventh Circuit precedent. If none existed, I would look to the language of the statute and any applicable constitutional provisions to determine whether the question could be resolved by the plain language. If a question continued to exist, I would consider persuasive, non-binding precedent from other courts, as well as opinions involving analogous issues. In conducting this analysis, I would take care to avoid unnecessarily determining any constitutional questions and would ensure that any constitutional analysis required be limited to resolving the narrowest possible question.

- 4. 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 and you are obliged to follow it, but do you agree with Justice Kennedy’s legal analysis?**

Response: As a sitting United States magistrate judge, I am bound to follow Supreme Court precedent and would certainly do so in all cases, including in cases involving capital punishment. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy wrote for the majority of the Supreme Court. Consequently, his decision is binding, and I could not consider any personal opinion I might have of his analysis in determining a case involving the same legal issue.

- a. When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

Response: I believe that the United States Constitution should be interpreted in accordance with American law.

- i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: When construing the United States Constitution, I consider American law and standards, as the United States Constitution is a uniquely American document.

- 5. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No, it is not proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution, unless binding Supreme Court or Eleventh Circuit precedent requires it.

- a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: I would consider foreign law only if binding Supreme Court or Eleventh Circuit precedent required me to do so.

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

Response: I believe that American laws should be interpreted by looking to American precedent and the United States Constitution.