Responses of Jeffrey L. Viken
Nominee to the U.S. District Court for the District of South Dakota
to the Written Questions of Senator Tom Coburn, M.D.

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 agree with President Obama's quote?**

    Response: President Obama's quote describes some of the characteristics he values in selecting judicial nominees. His constitutional function in nominating Article III judges is different from the function performed by a sitting judge. The constitutional role of a federal district judge is to assess the facts presented by the parties and to respect legal precedent in reaching a decision.

    b. **Do you believe that you fit President Obama's standard as described in his quote?**

    Response: Yes

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

    Response: A judge's consideration of a case must always be governed by impartiality, evenhandedness, attention to facts presented by the parties, and respect for established law. Empathy is a personal characteristic which may assist a judge in analyzing the human circumstances which bring people before the court. But the law and not the personal experiences of jurists is the path to justice in considering each case

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

    Response: A federal district judge is a public servant. The role of a federal district judge encompasses diligent legal scholarship, a strong work ethic, impartial and dispassionate consideration of proven facts and reasoned legal arguments, fidelity to binding and persuasive precedent, and respect for all who appear before the court.

    a. **How would you define "judicial activism?"**

    Response: This term has been used and interpreted by many people in many contexts in recent political and policy discussions. From my perspective, "judicial activism" means a departure from settled law as established by

statute or legal precedent for the purpose of reaching a selected outcome on social, political or policy issues.

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: The Constitution is interpreted by the United States Supreme Court in its decisions and by Congress through the enactment of legislation. The Constitution is "living" in the sense that it is applied to specific fact patterns presented to the lower courts. Those courts are bound by statutory provisions and by settled constitutional interpretation from the Supreme Court.

c. In *Roper v. Simmons*, Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. Do you agree with Justice Kennedy's ruling? Do you agree with his reasoning?

Response: Justice Kennedy's majority opinion in Roper is settled law. I have not studied the sources Justice Kennedy relied upon in reaching the majority ruling and so have no position on his reasoning.